

86-421

Supreme Court, U.S.
FILED

SEP 15 1986

JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

BOARD OF DIRECTORS OF ROTARY
INTERNATIONAL, et al.,

Appellants,

v.

ROTARY CLUB OF DUARTE, et al.,

Appellees.

**Appeal from the Court of Appeal
of the State of California
Second Appellate District**

APPELLANTS' APPENDIX

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APPENDIX A



A-1

SUPERIOR COURT OF THE STATE OF
CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ROTARY CLUB OF DUARTE, et al.,

Plaintiffs,

vs.

BOARD OF DIRECTORS OF ROTARY
CLUB INTERNATIONAL, et al.,

Defendants.

No. C244753
MEMORANDUM
OF DECISION

Factual Background

In 1977, the Rotary Club of Duarte was experiencing a low level of membership (below Rotary International's minimum of 20 members per club).

The local club therefore began to recruit female members despite their knowledge that the bylaws of Rotary International limited membership to males. Three women were enrolled.

Thereafter, the local club was directed to drop the women as members or have their charter revoked. The Duarte club refused and subsequently lost its charter. It filed an appeal with Rotary International asking that the bylaws be changed to permit memberships by women.

In 1978, the appeal was heard at a session of Rotary International at Tokyo, Japan, the revocation was affirmed, and the international body voted not to change its bylaws.

Duarte then brought this lawsuit on its own behalf and on behalf of the three women (two of whom dropped out of the now X-Rotary Club of Duarte and out of the lawsuit).

Rotary Club International is a worldwide association of Rotary Clubs having nearly 1,000,000 members in approximately 20,000 clubs in 157 different countries. Individual members are required to attend a stipulated number of meetings each year, and, if they miss a meeting, or are traveling, they are required to "make up" the missed meetings at some other Rotary Club anywhere in the world. Obviously, the social mores of these clubs vary greatly. In the United States, the local Rotary Clubs receive their charters from Rotary Clubs International, an Illinois corporation.

Rotary Clubs have a restricted membership, other than gender, as only one person from each of a set list of business or professional categories, or subcategories, are permitted membership in a club, e.g., doctors, dentists, real estate brokers, salesman, etc. The subcategories are numerous.

Rotary's stated purpose is to seek a cross-section of the business and professional community by limiting the number of local club members drawn from any single business or profession. It does not discriminate on the grounds of race, religion or national origin and welcomes clubs having membership representative of the diverse origins of the local population.

The stated purposes of Rotary are to encourage fellowship among its members in order to promote a variety of charitable, civic and eleemosynary "service" projects undertaken by the local clubs, with the guidance and assistance of Rotary International. Rotary also undertakes "service" activities of broader geographical impact through a wide

variety of inter-club activities, including projects of international scope.

Rotary's "Manual of Procedure" provides:

"... a Rotarian should not expect, and far less should he ask for, more consideration or advantages from a fellow Rotarian than the latter would give to any other businessman with whom he is in business relations."

The Issues

The amended complaint of the plaintiffs contains three causes of action which, in essence, may be stated as follows:

(1) The male only policy violates the California Unruh Act (Civil Code section 51) because Rotary is a "business establishment."

(2) The male only policy violates Article 1, section 8 of the California Constitution because exclusion from Rotary impedes women in pursuing a business, profession, vocation, or employment on the basis of sex.

(3) Acts of Rotary District Governor Paul Bryan in July 1977 estop Rotary from ever again requiring Duarte to restrict its membership to males.

Plaintiffs have explicitly limited their claims to these three elements of California law.

Moreover, plaintiffs have explicitly disclaimed asserting violation of federal law. In fact, plaintiffs successfully resisted an attempt to remove this case to the U.S. District Court where federal constitutional issues might be raised. The parties now concede there is no federal question involved because the U.S. Constitution limits state and public agency discriminatory actions and not those of individuals or private associations.

The legal issues to be decided are, therefore, very narrow.

The Constitutional and Statutory Law

Article 1, section 8 provides:

"A person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color or national or ethnic origin."

Civil Code section 51 provides in pertinent part:

"All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

Discussion

First Cause of Action

The heart of the dispute in this case lies in the first cause of action dealing with the Unruh Act (Civil Code section 51, quoted *supra*).

The whole issue regarding the Unruh Act is whether Rotary is a "business establishment." There is a dearth of authority.

The plaintiffs rely heavily on *Burks v. Poppy Construction Company*, 57 C.2d 463; 20 Cal. Rpr. 609; 370 P.2d 313 (1962) where a black family sued a home builder who refused to sell to them. The issue was what constituted a "business establishment." Chief Justice Gibson held that "business establishment" should have the broadest possible construction and is not limited to a physical location. The

real thrust of that opinion, in the context of the present case, appears at page 468 as follows:

"The word 'business' embraces everything about which one can be employed, and it is often synonymous with '*calling, occupation, or trade, engaged in for the purpose of making a livelihood or gain.*'" "... The word 'establishment' includes not only a fixed location, such as the 'place where one is permanently fixed for residence or business,' but also a 'commercial force or organization' ... (Emphasis added)

In 1970, the California Supreme Court amplified this definition as follows:

"However, there is no indication that the Legislature intended to broaden the scope of section 51 to include discriminations other than those made by a 'business establishment' in the course of furnishing goods, services or facilities to its clients, patrons or customers. *Alcorn v. Ambro Engineering, Inc.*, 2 C.3d 493; 86 Cal. Rptr. 88; 468 P.2d 216."

The Court cited with favor the article by Prof. Harold W. Horowitz in 33 U.S.C. Law Rev. 260 at 288-289, 294 where the history of Section 51 through its various drafts is discussed.

In a similar case, *Kiwanis Club of Great Neck v. Board of Trustees of Kiwanis International*, 374 N.Y.S. 2d 265 (1975), aff. 383 N.Y.S. 2d 383, the Court outlined the Constitution of International revealing its stated objectives as very similar to those of Rotary International.

While the *Kiwanis* decision was based on the Federal and N.Y. State constitutions and statutes, the Court does point out that the organization is private, and not public, in character, and not of a commercial nature:

"The fact that individual members may use their membership in a club to further their own business interests does not, in any way, change the avowed purposes of the organization, or convert it into a commercial club. (P. 268)"

California courts, in applying the Unruh Act have drawn a distinction between organizations that are either public or affected with a public interest and thus commercial in character, and organizations whose functions are private.

In *Marina Point, Ltd. v. Wolfson*, 30 Cal.3d 721 (1982) the California Supreme Court held that an "adult only" policy in a *rental* apartment complex involved a business establishment and violated the Unruh Act.

But, in *O'Connor v. Village Green Association*, 2d Civ No. 61853, 2d App. Dist., Div. 2 (1982) the appellate court distinguished *Marina* in a case involving a condominium and held that the rules of an association of private condominium owners constituted a private contract and that the Unruh Act would not apply.

In our case we have a group of people who already have their own diverse callings or occupations and who have associated themselves in a service organization which is not *itself* a calling, occupation, or trade engaged in for livelihood or gain.

The individual plaintiff's disclaimer of a pecuniary motive in joining Duarte emphasizes the Rotary objectives stated above which in essence say that Rotarians should not seek, or grant, business advantages from, or to, other Rotarians that would not be afforded non-Rotarian businessmen.

Finally, the Courts have tried to strike a balance between the equality and professional interests of those excluded and the associational interests of club members. As Mr. Justice Douglas, probably the most outspoken civil libertarian of our

time, stated in *Moose Lodge v. Irvis*, 407 U.S. 163, 179-180 (1972):

"My view of the First Amendment and the related guarantees of the Bill of Rights is that they create a zone of privacy which precludes government from interfering with private clubs or groups. The associational rights which our system honors permits all white, all black, all brown, and all yellow clubs to be formed. They also permit all Catholic, all Jewish, or all agnostic clubs to be established. Government may not tell a man or a woman who his or her associates may be. The individual may be as selective as he desires. So the fact that the Moose Lodge allows only Caucasians to join or come as guests is constitutionally irrelevant, as is the decision of the Black Muslims to admit to their services only members of their race."

While the quoted comment was in the context of the Bill of Rights, it illustrates the underlying precepts of our own state legislation.

In applying those precepts, we must not lose sight of the fact that, as a practical matter, the application of the Unruh Act to Rotary International might be in itself an unconstitutional extraterritorial act because its impact would be felt throughout the nation and the world where Rotary members are expected to exchange visits at other clubs. See 5 Witkin, Summary etc., Constitutional Law Sec. 289.

Second Cause of Action

As to Article 1, Section 8, of the Constitution, plaintiffs have offered no proof that the female member has been *disqualified from entering or pursuing a business, profession, vocation or employment* because of her sex.

First of all, the applicants already engaged in a business or profession and no employment was denied them. They were

merely denied the privilege of joining with individuals from other vocations, professions and businesses in a community service organization.

The individual plaintiffs concede that they have not suffered any loss attributable to their rejection, further concede that they did not join Rotary in order to achieve professional advancement, but speculate that they might at some time in the future be denied career advancement because of a lack of Rotary status. They overlook the fact that women have a number of their own organizations akin to Rotary or Kiwanis in their Soroptomists, Zonta, and other clubs.

Plaintiffs rely on *United States Jaycees v. McClure*, 305 N.W.2d 764 (Minn. 1981) which held that the Jaycees could not reject women. In reaching that decision the Court pointed out that the Jaycees had *no* restrictions on numbers or business categories. Further the Jaycee literature refers to its members as customers and that Jaycees are selling "a product." The Court concluded that the Jaycees were a business.

However, in rejecting the national organization's claim that it should be treated as a private organization, the Court made this significant comment (p. 771):

"We, therefore, reject the national organization's suggestion that it be viewed analogously to private organizations such as Kiwanis International Organization."

The Court thus said, in effect, that it would rule differently as to Kiwanis. Rotary and Kiwanis are very similarly structured.

The only California cases cited as authority are those dealing with state regulatory agencies, and the thrust of the

court opinions is that this section only applies to state agencies. *Sail'er Inn, Inc. v. Kirby*, 5 Cal.3d 1, 8-10 (1971).

Third Cause of Action

In the third cause of action, the plaintiffs allege that Paul Bryan, District Governor, attended one or more of Duarte's meetings and did not remonstrate about women being present. Bryan admits that he knew of their presence but testified that he never gave his approval.

It also appears that the women members were on the rosters submitted to the International in Illinois and were apparently overlooked. As soon as the matter was brought to the attention of the national officers they took action.

Plaintiffs have offered no authority that equitable estoppel will lie against a national organization where to do so would violate the international bylaws. Obviously a local, or district, officer would have no authority ostensible or otherwise, to create an estoppel.

Furthermore, the plaintiffs knew they were violating the bylaws at the outset. Their "unclean" hands prohibit their obtaining equitable relief. In any case, they were never misled to their detriment.

Conclusions

For all the foregoing reasons, the injunction is denied and judgment will be entered for the defendants. Attorneys for defendants to prepare the judgment.

DATED: February 8, 1983

MAX F. DEUTZ
MAX F. DEUTZ
Judge of the Superior Court



APPENDIX B



APPENDIX B

Attorneys for Defendants.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ROTARY CLUB OF DUARTE, MARY
LOU ELLIOTT and ROSEMARY
FREITAG,

Plaintiffs,

v.

BOARD OF DIRECTORS OF RO-
TARY INTERNATIONAL, ROTARY
DISTRICT 530, PAUL G. BRYAN, and
OLIVER BATCHELLOR,

Defendants.

No. C 244, 253

STATEMENT
OF DECISION

(C.C.P. § 632)

The above-entitled case came on regularly for trial on December 2, 1982 in Department 54 of the above-entitled Court, the Honorable Max F. Deutz, Judge presiding, without a jury. Trial was concluded on December 3, 1982. Sanford K. Smith, Esquire, Carol Agate, Esquire, and Fred Okrand, Esquire of the American Civil Liberties Union Foundation of Southern California appeared as counsel for plaintiffs. Wm. John Kennedy, Esquire and Darling, Hall & Rae appeared as counsel for defendants.

A "Stipulation Regarding Certain Undisputed Facts and Related Portions of the Record" together with the documentary material specified therein was received by the Court. Additional oral and documentary evidence was introduced on behalf of the respective parties. Both sides submit-

ted initial and supplemental trial briefs. The case was orally argued and submitted for decision on January 28, 1983. The Court issued a written Memorandum of Decision on February 8, 1983. The Court now, at the request of all parties, issues this Statement of Decision in accordance with California Code of Civil Procedure § 632.

The Court has determined that the following facts are true.

Rotary International is a worldwide association of approximately 20,000 local Rotary clubs in approximately 157 different countries. Membership in the local clubs includes approximately 1,000,000 business and professional men worldwide. Rotary International is an Illinois not-for-profit corporation having its principal office in Evanston, Illinois. It has not qualified to do business in California and has received no tax exemptions from the State of California.

Each local Rotary Club seeks its members from the business and professional leaders within a clearly-defined geographical community approximating a single municipality in size. There is only one local Rotary Club in any given geographical community. For purposes of administration, Rotary International groups geographically adjacent clubs into districts. The clubs in each district annually nominate a district governor who, after being elected by Rotary's annual international convention, serves as the field representative of Rotary International.

Plaintiff Rotary Club of Duarte ("Duarte") was a local Rotary club prior to its expulsion within Rotary District 530. Former District 530 governors Paul Bryan and Oliver Batchellor have been voluntarily dismissed as defendants.

The primary purpose of Rotary is to encourage a fellowship among business and professional men representing a diverse cross-section of the business and professional activities within the local community. In addition to the encour-

agement of fellowship for its own intrinsic merit, Rotary uses that fellowship to promote a variety of voluntary, civic, eleemosynary, and charitable "service" activities undertaken by the local clubs with the guidance and assistance of Rotary International. Additional assemblies, "service" projects, and other activities of broader geographical scope are also undertaken at the district, national and international level.

Although some individual Rotarians derive sufficient business advantage from Rotary to warrant deduction of Rotarian expenses in income tax calculations, or to warrant payment of those expenses by their employers, the Court finds that such business benefits are incidental to the principal purposes of the association which are to promote fellowship for *non-commercial*, and *non-economic* objectives and to secure the voluntary uncompensated participation of business and professional men in the aforesaid "service" activities. For many years the official and genuine policy of Rotary International has been to discourage the seeking or giving of preferential business custom among Rotarians or the use of Rotarian membership for commercial gain. Although Rotary on occasion sponsors vocational seminars for its members addressed to the general business interests of its membership, the Court finds such activity to be of subordinate importance to the aforesaid principal purposes of Rotary, and to be consistent with the purpose of encouraging disinterested fellowship among Rotarians.

The importance of associational congeniality among Rotarians is substantial. Demanding and strictly enforced standards for attendance at weekly meetings result in an average worldwide attendance of 80 percent. When conflicts prevent a Rotarian from attending his own club's meeting, he is required to "make-up" his attendance at the regular meeting of another club. Such "make-up" activities result in

substantial inter-club attendance. International travel results in a material amount of club visitation by foreign Rotarians. Attendance at weekly meetings is in addition to participation in the voluntary cooperative "service" projects which form a central part of Rotarian activity.

Rotary does not discriminate on the grounds of race, religion, or national origin and welcomes local clubs having memberships that are representative of the diverse origins of their local population. The plaintiff Duarte club had for many years prior to its expulsion been such a racially, religiously, and ethnically diverse club. However, in a number of other respects Rotary is highly selective in its membership.

In order to provide a diversity of fellowship, to prevent clubs from being dominated by a few business or professional segments of the community, and to encourage a broad awareness of community needs to be addressed by the "service" activities, Rotary imposes a "classification" system limiting the number of members in a local club from any single line of business or profession. Although this "classification" system appears to have originated many years ago from self-seeking commercial purposes, the Court finds that Rotary has for many years consciously, genuinely, and effectively abandoned use of the "classification" system as a device for encouraging preferential business relationships among Rotarians.

In addition to the "classification" system, local Rotary clubs, prompted by advice from Rotary International, screen potential members for the integrity of their reputation in the business community, for their dedication to the "service" objectives of Rotary, and for their willingness and ability to abide by the rigorous attendance and participation standards

of Rotary. Rotary membership is neither solicited from nor is it available to the public generally.

At the club membership level Rotary International, with the cooperation of the district governor, carefully screens new clubs to see that the community in which they propose to function is not already served by a local Rotary club, that the proposed new community contains a minimum of 50 separate "classifications", and that a minimum of 20 qualified business and professional men in 20 separate "classifications" are willing and available to start the new club. Each new club is then placed on a probationary basis to make certain it can effectively discharge its attendance, service and other Rotarian obligations.

A principal task of the district governor is to make an annual visit to and review of the local clubs in his district to see that they are remaining active, complying with the applicable Rotarian rules, and rendering effective "service" to their communities. Annual reports to Rotary International on each local club give a detailed review of membership level, attendance level, and a description of the "service" activities of the club. Laggard clubs are given special attention both by the district governor and Rotary International. If a local club persists in an unsatisfactory level of membership, attendance, or community service, efforts are made to secure the voluntary termination of its charter. In a few extreme cases, involuntary termination of a local club's charter has been necessary.

In addition to the foregoing principles of selectivity the constitution of Rotary International imposes on local Rotary clubs a membership restricted to "adult male persons". The rule had its origin many years ago in the quality of fellowship desired by Rotary's founders. However, as Rotary grew nationally and internationally, that membership policy grew into a fundamental and broadly accepted principle of Rotar-

ian operation, cherished not only for the quality of fellowship which it provided, but also to a material extent maintained because of the demonstrated fact that, as a "male-only" organization, Rotary had been able to operate effectively over a worldwide base of varied cultures and social mores.

In the last decade a number of proposals have been made to modify the restriction to allow more participation by women. In recent years, the only body authorized to amend Rotary International's constitution is the 400-man Council on Legislation which meets once every three years and is composed of democratically elected representatives from all of the diverse countries having local Rotary clubs. A vote of two-thirds of the delegates is required to approve an amendment. At both the 1977 meeting of the Council on Legislation in San Francisco, and at the 1980 Council on Legislation in Chicago several proposals to amend the "male-only" policy were debated and rejected. In 1980, 60 percent of the delegates voted against amending the membership restriction. The issue remains alive and vital and will be again debated at the 1983 Council on Legislation in Monaco.

It is clear that a ruling by this court, applying California law to California chapters of Rotary, allowing them to accept woman members contrary to the long standing and democratically reaffirmed membership principles of Rotary would comprise a material interference with deeply felt choices of associational preference of many Rotarians. The practical impact of such a ruling would materially affect the operation of Rotary not merely outside the State of California but outside the United States.

The Court accepts the testimony herein of Rotary's General Secretary that this issue is of widespread and deep concern among Rotarians both in the United States and in

widely different cultures throughout the world. The Court also accepts his testimony that the continued successful worldwide operation of Rotary is materially dependent on a delicate balance of divergent attitudes in diverse cultures, and that judicial interference with this balance, as reflected by the votes in Rotary's Council on Legislation, would risk a material and harmful disruption of the existing cooperative integrity of Rotary International both inside and outside the State of California.

Plaintiffs do not *directly* challenge the accuracy or merit of Rotary's concerns about the impact of interfering with its membership policy. Rather, they assert that there are countervailing economic interests of women in having access to Rotarians *within the ambit of Rotarian fellowship* for the purpose of acquiring "business contacts" which, they claim, cannot be achieved outside the limited confines of that fellowship. Ironically, this contention would have the Court nullify existing membership restrictions so that women could further violate Rotarian precepts by seeking commercial exploitation of Rotarian membership.

The Court finds that plaintiffs have not demonstrated that membership in the Duarte Club prior to its expulsion from Rotary comprised a substantial source of business contacts. In fact, Duarte was having difficulty attracting members. The Court further finds that the expulsion of Duarte from Rotary did not harm it as a vehicle for making business contacts. In fact the size of its membership and the vigor of its activities thereafter increased. The three female members of Duarte, *by their own admission*, did not join Duarte for professional benefits and disclaim any harm to their careers by reason of expulsion of Duarte by Rotary. The Court does not accept as true the speculation that at some time in the future their careers *might* suffer from Rotary's male-only policy. The Court is not persuaded by the evi-

dence introduced in this case that the "male-only" membership restriction of Rotary has deprived any woman of any material or substantial economic advantage. cf. Goodwin *Challenging The Private Club: Sex Discrimination Plaintiffs Barred At The Door*, 13 Southwestern Law Review 237 (1982). In this respect membership in Rotary is *not* equivalent to membership in certain professional societies. cf. *Pinsker v. Pacific Coast Society of Crthodontists*, 1 Cal. 3d 160, 165 (1969). Plaintiffs have expressly disclaimed monetary damages.

To force Rotary International by judicial intervention to permit local clubs in California to admit women members contrary to its democratically reaffirmed male-only membership policy would be inequitable. Without limiting the generality of the foregoing, such an injunction would create a substantial risk of irreparable harm to the national and international associational integrity of Rotary without conferring a commensurate or even a material economic, social or other benefit upon the plaintiff women in particular, or women in general.

In addition to the foregoing general findings, the court makes the following fact determinations of particular relevance to the issues raised by the pleadings. Preliminarily, it should be noted that plaintiffs disclaim reliance upon federal law and have used that disclaimer to defeat removal of this case to the federal courts. Rather, they limit their contentions to only three (3) principles of California law.

The Unruh Act (Civil Code § 51)

With respect to this contention, the Court finds that neither Rotary International, nor Rotary District 530 nor plaintiff Duarte are any of the following:

- (a) a business establishment of any kind whatsoever;

(b) an organization conducting a calling, occupation, or trade which its members engage in for the purpose of making a livelihood or gain. cf. *Burks v. Poppy Construction Co.*, 37 C. 2d 463, 468, (1982).

(c) an organization engaged in providing goods, services, and facilities to its members as clients, patrons, or customers, cf. *Alcorn v. Ambro Engineering, Inc.*, 2 Cal. 3d 493, 500 (1970). In this respect Rotary is materially different from the organizations described in *United States Jaycees v. McClure*, 305 N. W. 2d 764 (Minn., 1981) and *Wright v. Cork Club*, 315 F. Supp. 1143 (S. D. Tex., 1970).

(d) an organization formed or maintained for the protection or advancement of the business or professional interests of its members;

(e) an organization which encourages its members to do business with each other;

(f) an organization primarily engaged in for the purpose of obtaining business contacts for its members.

Moreover, to require Rotary International pursuant to the *Unruh Act* to offer its membership to women (as well as to the entire public indiscriminately) would inflict severe, irreparable, and unconscionable harm upon Rotary and the associational rights of its members without commensurate or any substantial resulting economic benefit to women or the public. To require Rotary International to permit its local clubs in California to offer individual membership to the general public would forcibly inject that general public into Rotarian activities outside California and outside the United States, contrary to existing Rotarian rules and regulations.

Article I, Section 8 of the California Constitution

The Court finds that plaintiff Duarte and Rotary International are not government entities nor is there a nexus between the "male-only" membership policy of Rotary and any government entity, or action. Plaintiffs have disclaimed "government action".

No act of defendants has directly or indirectly disqualified or otherwise impeded any plaintiff or any woman from entering, or pursuing a business, profession, vocation, or employment because of sex.

The Estoppel Count

The Court accepts as true the testimony of former District 530 governor Paul Bryan that during his visit in July 1977 he expressly advised Duarte that the Constitution of Rotary did not permit admission of women members, that he could not condone Ms. Bogart's membership, but that he would refrain from reporting to Rotary International the violation of Rotary's membership rules by Duarte on the understanding with Duarte that Donna Bogart's membership would be voluntarily terminated. Mr. Bryan neither advocated nor condoned the concealment of Ms. Bogart's identity from Rotary International by the use of the name "Don" or "D. Bogart" or otherwise.

At all relevant times plaintiffs knew that Mr. Bryan did not have actual or ostensible authority to permit Duarte to admit women members.

Duarte admitted women to membership in knowing violation of Rotary's membership restriction, in deliberate violation of the understanding reached with Mr. Bryan in July 1977, and is therefore guilty of unclean hands precluding injunctive relief.

No plaintiff was misled by any act of Mr. Bryan or Rotary District 530 or Rotary International. No plaintiff suffered a detriment by reason of any act of Mr. Bryan or Rotary District 530 or Rotary International.

Rotary was not estopped from enforcing the male only membership restriction in its constitution. It suspended Duarte only after a fair hearing, after full compliance with its internal rules of procedure, and after giving Duarte a fair opportunity to bring its membership in compliance with the male only restriction.

The Court reaches the following conclusions of law, together with any factual determinations implicit therein.

Neither plaintiff Duarte, Rotary International or Rotary District 530 are "business establishments" within the meaning of the California Unruh Civil Rights Act (Civil Code § 51). [*Burks, supra*, 37 C. 2d 463, 468 (1962)]. Membership in any of these organizations is not tantamount to being the "client, patron, or customer" of a business establishment [*Alcorn, supra*, 2 Cal. 3d 493, 500 (1970)].

The Court accepts the interpretation of legislative history reached by Professor Horowitz that would preclude application of the Unruh Act to "membership" in private organizations, particularly where, as here, that membership connotes substantial personal and social interactions with other members. See Horowitz, *The 1959 California Equal Rights In "Business Establishments" Statute—A Problem In Statutory Application*, 33 So. Cal.L.Rev. 261, 289-290 (1960).

The Court agrees with defendants' contention that the legislative history of the Unruh Act¹ implies a legislative intention to exclude

¹ See Horowitz, *supra*, 33 So. Cal.L.Rev. 261, 265-270.

"membership in any and all business and professional organizations formed or maintained primarily for the protection or advancement of the business or professional interests of the members"

from the scope of

". . . accommodations, advantages, facilities, privileges or services in all business establishments of every kind whatsoever",

as the statute was finally enacted.

Moreover, as found above, the Court rejects plaintiffs' contention that the evidence of income tax deductions, payment of dues by employees, etc, connotes that Rotary is an organization having the business and professional interests of its members as a principal or material objective. Rather, the Court finds substantial similarity between Rotary and Kiwanis as described in *Kiwanis Club of Great Neck, v. Board of Trustees of Kiwanis International*, 374 NYS 2d 265 (1975), aff'd 383 NYW 2d 383 (1976), aff'd 41 NY 2d 1034(sic). This Court agrees with the conclusion of the New York court that

"The fact that individual members may use their membership in a club to further their own business interests does not, in any way, change the avowed purpose of the organization, or convert it into a commercial club." 374 NYS 2d at 268.

Moreover, even if Rotary were a commercial club explicitly rendering economic services to its members, that fact alone does not imply a duty under the Unruh Act or otherwise, to share those economic services indiscriminately with any member of the public who desires membership. Plaintiffs have conceded that the present case is closely similar to the New York Kiwanis case but contend that

under California law, the opposite result should obtain. The Court disagrees.

The "male only" membership policy of Rotary is not itself tantamount to the action of any government, nor is there a material "nexus" between any government action and the "male-only" membership restriction of Rotary, which is a private association of private local clubs. Article I, § 8 of the California Constitution has only been applied as a restriction on government action and thus is not applicable to Duarte, Rotary International, or Rotary District 530. *Sail'er Inn, Inc. v. Kirby*, 5 Cal. 3d 1, 8-10 (1971).

Where, as here, there is no persuasive proof that exclusion from membership in the purely private organizations comprising Rotary has imposed a material or substantial economic constraint upon any woman, it would be a violation of defendants' rights to liberty of association under the United States Constitution for the California Courts or Legislature to require the defendant organizations to accept women in contradiction of the male only membership restrictions which have been frequently and recently reaffirmed democratically by the members of Rotary, *Healy v. James*, 408 U.S. 169 (1972); *Moose Lodge v. Iris*, 409 U.S. 163, 179-180 (Mr. Justice Douglas, dissenting) *Griswold v. Connecticut*, 361 U.S. 479, 483 n. 20 (1965); *Bell v. Maryland*, 378 U.S. 226, 313 (1964); *Gibson v. Florida etc.*, 372 U.S. 539, 543 (1963); *NAACP v. Alabama*, 357 U.S. 449, 460-461 (1958). See also 5 Witkin, *Summary of California Law*, Constitutional Law, §§ 165, 224.

Were the Unruh Act applicable to the membership policy of Rotary, it would not merely eliminate selectivity as to women; it would eliminate virtually any discretion in the selection of members. *Marina Point, Ltd. v. Wolfson*, 30 Cal. 3d 721, 730-736 (1982); *In re Cox*, 3 Cal. 3d 205, 216 (1970). The severe harm to Rotary caused by this latter

consequence is not balanced by any material economic benefit either to the public in general or to women in particular, would be inequitable and would therefore preclude the injunctive relief sought herein.

Plaintiffs have asked this California court to apply California law to an Illinois corporation administering a worldwide voluntary association of 20,000 local clubs comprise 1,000,000 men operating in substantial measure not merely outside California but also in diversity of 156 foreign cultures outside the United States. They ask this Court to force that association against its repeatedly expressed democratic preferences to accept not merely into its society, but to accept as *members* into its policy making councils a class of persons who, at least at the present time, are not freely welcome to a majority of that association's membership. There has been neither a showing or a claim that Illinois law has been violated, or have plaintiffs demonstrated any economic or other reasons why, under well-settled constitutional principles of interstate comity, the law of Illinois should not be the sole test of that corporation's internal membership rules. See generally 5 Witkin, *Summary of California Law*, Constitutional Law, § 289; *Order of United Commercial Travelers v. Wolfe*, 331 U.S. 586, 624 (1947). The Court concludes that these extra-territorial considerations alone are sufficient to decline granting the drastic injunctive relief sought by plaintiffs.

For the above reasons, judgment shall be entered in favor of the defendants and against the plaintiffs.

DATED: March 21, 1983.

MAX F. DEUTZ
Max F. Deutz,
Judge of the Los Angeles
County Superior Court

APPENDIX C



CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

ROTARY CLUB OF DUARTE, et al.
Plaintiffs and Appellants,

v.

BOARD OF DIRECTORS OF
ROTARY INTERNATIONAL, et al.
Defendants and Respondents.

No. B001663
(Super. Ct. No.
C244753)

ORDER MODI-
FYING OPIN-
ION AND
DENYING
REHEARING

THE COURT:

It is ordered that the opinion filed on March 17, 1986, be modified in the following particulars:

1. On page 18, the first sentence of the second full paragraph is deleted and the following is inserted in its place.

International is administered by the Board which consists of 17 members and which controls and manages the affairs and funds of International.

2. On page 42, the first 5 lines of the third full paragraph are deleted and the following is inserted in their place:

While the classification principle—i.e., membership criteria—established by International, and by which local clubs must abide, might at first blush appear to be selective, Rotary's own literature dispels this notion. Noting that the classification principle "would seem to

be a restrictive provision" International, through its literature, explains that *"its purpose is to produce an inclusive, not exclusive, membership, making possible the recognition of all useful local occupations, and enabling the club to be a true cross section of the business and professional life of the community."* (Rotary Basic Library, Focus on Rotary, vol. 1, p. 67; emphasis added.)

Additionally, the immense size of International and the number of Rotarians throughout the world is hardly indicative of an intimate relationship. While fellowship and service to the

3. On page 45, the last sentence of the second full paragraph is deleted and the following is inserted in its place:

It does not require International to change its objectives or to open membership to the entire public at large, nor does it invalidate its "inclusive, not exclusive," selective membership requirements.

(Rotary Basic Library, Focus on Rotary, vol. 1, p. 67.)

Respondents' petition for rehearing is denied.

*WOODS, P.J.

McCLOSKEY, J.

SHIMER, J.**

**Assigned by the Chairperson of the Judicial Council

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

ROTARY CLUB OF DUARTE, et al.

Plaintiffs and Appellants,

v.

BOARD OF DIRECTORS OF
ROTARY INTERNATIONAL, et al.

Defendants and Respondents.

No. B001663

(Super. Ct.
No. C244753)

APPEAL from a judgment of the Superior Court of Los Angeles County. Max F. Deutz, Judge. Reversed.

ACLU Foundation of Southern California, Carol Agate, Sanford K. Smith and Fred Okrand, for Plaintiffs and Appellants.

Women Lawyers' Association of Los Angeles, Carol S. Boyk, Evelyn Balderman Hutt, Lorraine L. Loder, Susan Schwartz, and Blanch Bersch as Amicus Curiae on behalf of Plaintiffs and Appellants.

Darling, Hall & Rae and Wm. John Kennedy, for Defendants and Respondents.

Incredibly, 14 years before the start of the 21st century and 210 years after the signing of the Declaration of Inde-

pendence we still find ourselves having to write an opinion defending the right of American women to equal opportunity in a secular organization of approximately 20,000 clubs with more than 900,000 members.

Specifically, we are called upon to decide whether the Board of Directors of Rotary International (Board) may lawfully revoke the charter of the Rotary Club of Duarte (Duarte) and terminate its membership in Rotary International (International) because Duarte admitted women into its club.

To do this we must decide whether the male-only-membership policy of International violates the Unruh Civil Rights Act (Unruh Act) (Civ. Code, § 51).¹ Also presented for resolution in this case is the question of whether International's policy of excluding women from club membership violates article 1, section 8 of the California Constitution.²

International, a non-profit organization incorporated in the State of Illinois, is the association of local Rotary clubs

¹ Civil Code section 51 provides: "This section shall be known, and may be cited, as the Unruh Civil Rights Act. [¶] All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. [¶] This section shall not be construed to confer any right or privilege on a person which is conditioned or limited by law or which is applicable alike to persons of every sex, color, race, religion, ancestry, or national origin."

² Article 1, section 8 of the California Constitution provides: "A person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin."

worldwide. Each individual Rotarian is a member of his local club, not of International. These local clubs are, in turn, members of International which is headquartered in Evanston, Illinois. In August 1982, approximately 19,788 local clubs existed throughout the world. Membership in these clubs totaled approximately 907,750 men.

International defines Rotary as "an organization of business and professional men united worldwide who provide humanitarian service, encourage high ethical standards in all vocations, and help build goodwill and peace in the world." (1981 Manual of Proc., p. 7; 1978 Manual of Proc., p. 7.)³

The purpose of International are "[t]o encourage, promote, extend and supervise Rotary throughout the world" and "[t]o co-ordinate and generally direct the activities of Rotary International." (Art. II of the International Const., 1981 Manual of Proc., p. 239, 1978 Manual of Proc., p. 241.)

³ On our own motion we have augmented the record on appeal to include the Los Angeles Superior Court file pursuant to California Rules of Court, rule 12(a).

Pursuant to a written "Stipulation Regarding Certain Undisputed Facts and Related Portions of the Record" certain documentary evidence including International's 1975, 1978, and 1981 manuals of procedure, the deposition of Herbert A. Pigman, General Secretary of International, the seven volume "Rotary Basic Library" and International publication No. 501 was admitted into evidence.

International's manual of procedure is the authoritative statement of Rotary practices and principles. It is updated and reprinted every three years after the meeting of the Council on Legislation. The Council on Legislation meets triennially and constitutes the legislative body of International. (Art. VIII, § 6 of the International Const., 1981 Manual of Proc., pp. 241-242, 1978 Manual of Proc., p.244.)

Membership in local Rotary clubs is limited to men. (Art. IV, § 3 of the International Const., 1981 Manual of Proc., pp. 239-240, 1978 Manual of Proc., pp. 241-242; art. II of Bylaws of International, 1981 Manual of Proc., p. 249, 1978 Manual of Proc., p. 251; art. V of the Club Const., 1981 Manual of Proc., p. 303, 1978 Manual of Proc., p. 305.) The "classification principle" utilized by International, with certain exceptions, limits the number of members from each classification of business or profession within the community that can be admitted into active membership in a local Rotary club.⁴

Each club that is admitted to membership by International and which accepts the certificate of membership

⁴ Section 3 of article IV of the International Constitution which is entitled "Membership" provides:

"Section 3—*Composition of Clubs*. [§](a) A Rotary club shall be composed of men with the qualifications hereinafter provided and no club shall be qualified for membership in Rotary International unless the qualifications of its active members are as follows: [§] They are adult male persons of good character and good business or professional reputation, and [§] (1) engaged as proprietor, partner, corporate officer, or manager of any worthy and recognized business or profession; or [§] (2) holding an important position in an executive capacity with discretionary authority in any worthy and recognized business or profession; or [§] (3) acting as the local agent or branch representative of any worthy and recognized business or profession having charge of such agency or branch in an executive capacity; and [§] personally and actively engaged in the respective businesses or professions in which they are classified in the club and having their places of business or residence located within the territorial limits of the club. [§] In the event an active member of a club, after having an active membership in one or more clubs for five or more years, ceases to have his place of business or residence

"accepts, ratifies and agrees to be bound in all things, not contrary to law, by [the] constitution and the by-laws of Rotary International, and amendments thereto and to faithfully observe the provisions thereof." (Art. IV, § 4 of the International Const., 1981 Manual of Proc., p. 240; 1978 Manual of Proc., P. 242.)

Duarte is located in Rotary District 530. Rotary districts are geographical territories in which adjacent local Rotary clubs are grouped for administrative reasons of International. Each district has a district governor who acts as International's representative in the field. (Rotary Basic Library, Focus on Rotary, vol. 1, p. 81.)

In 1977, Duarte admitted Donna Bogart, Mary Lou Elliot, and Rosemary Freitag as active regular members of Duarte in contravention of the constitution and bylaws of International. Duarte had been experiencing membership problems and decided that its membership growth goals

within the territorial limits of the club, he may retain his membership in the club provided his new place of business or residence is located within the corporate limits of the city in which the club is located or within the territorial limits of an immediately adjoining club.

"(b) There shall be not more than one active member in each classification of business or profession, excepting the religion, news media and diplomatic service classifications, and excepting the provision for additional active members as provided in the by-laws.

"(c) The by-laws of Rotary International may provide for kinds of membership in addition to active membership in Rotary clubs to be designated as senior active, past service, and honorary membership and shall prescribe the qualifications for each." (1978 Manual of Proc., pp. 241-242; see also 1981 Manual of Proc., pp. 239-240.)

could best be reached by allowing qualified women to join it as it believed that in its small community there were more women than men leaders in the business and professional sector.

After complying with its own notice and hearing requirements, International, acting through its Board, revoked Duarte's charter and terminated its membership in International.

On January 8, 1979, Duarte, Elliott and Freitag filed an amended complaint for injunctive and declaratory relief against the Board, Rotary District 530, Paul G. Bryan, the district governor for Rotary District 530 for the 1977-78 fiscal year, Oliver Batcheller, the district governor for Rotary District 530 for the 1978-79 fiscal year, and numerous Doe defendants.⁵

In their amended complaint, plaintiffs sought (1) to enjoin the defendants from declaring Duarte's charter null and void, from compelling delivery of the charter to any representative of International, and from enforcing those provisions of the International constitution and by-laws restricting membership in local clubs to men and (2) a declaration that the acts of defendants violated the Unruh Act and article 1, section 8 of the California Constitution.

⁵ While Bogart was named as a party plaintiff in the original complaint for declaratory relief filed on June 20, 1978, she was not named as a party plaintiff in the amended complaint and is not a party to this appeal.

On May 2, 1982, at plaintiffs' request, the entire action as to defendant Oliver Batcheller was dismissed with prejudice.

On December 3, 1982, Paul Bryan was dismissed as a defendant pursuant to stipulation of counsel.

The matter was tried before the court sitting without a jury. On March 21, 1983, judgment was entered in favor of defendants and against plaintiffs. Concurrently with the filing of the judgment, the trial court filed a statement of decision as requested by plaintiffs pursuant to Code of Civil Procedure section 632.

In denying plaintiffs' requests for injunctive and declaratory relief the trial court found that International, Duarte, and Rotary District 530 are not "business establishments" within the meaning of the Unruh Act or organizations providing "goods, services and facilities" to its members. The trial court further found that to preclude the enforcement of International's male-only-membership policy in California would infringe upon the associational rights of many Rotarians and "would materially affect the operation of Rotary not merely outside the State of California but outside the United States." The trial court also found that plaintiffs failed to demonstrate that enforcement of the male-only-membership policy and expulsion of Duarte from International caused any damage to Duarte or to the individual plaintiffs or to women in general.

With respect to the constitutional claim of Freitag and Elliot, the trial court found that there was no nexus between International's male-only-membership policy and government action, that plaintiffs had made no claim of government action, and that "[n]o act of defendants has directly or indirectly disqualified or otherwise impeded any plaintiff or any woman from entering, or pursuing a business, profession, vocation, or employment because of sex."

DISCUSSION

I

The Unruh Act is to be liberally construed with a view to effectuating the purposes for which it was enacted and to promote justice. (*Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 28; *Winchell v. English* (1976) 62 Cal.App.3d 125, 128.) "As with all statutes, it must be construed in the light of the legislative purpose and design. In enforcing the command of a statute both the policy expressed in its terms, and the object implicit in its history and background, should be recognized." (*Winchell v. English, supra*, 62 Cal.App.3d at p. 128.)

One of the policies underlying the enactment of the Unruh Act is the eradication of discrimination by private or public action on the basis of sex by "business establishments in the furnishing of "accommodations, advantages, facilities, privileges, or services." (§ 51; *Koire v. Metro Car Wash, supra*, 40 Cal.3d at p. 36; *Winchell v. English, supra*, 62 Cal.App.3d at p. 128.) The Unruh Act is clearly a declaration of California's public policy mandate and objective that men and women be treated equally. (*Koire v. Metro Car Wash, supra*, 40 Cal.3d at p. 37.)

"[B]oth its history and its language disclose a clear and large design to interdict all arbitrary discrimination by a business enterprise. That the act specifies particular kinds of discrimination—[sex], color, race, religion, ancestry, and national origin—serves as illustrative, rather than restrictive, indicia of the type of conduct condemned." (*In re Cox* (1970) 3 Cal.3d 205, 212.)

The Unruh Act, enacted into law in 1959, emanated from and was modeled after traditional public accommodations legislation. It "expanded the reach of such statutes from common carriers and places of public accommodation and

recreation, e.g., railroads, hotels, restaurants, theaters and the like, to include 'all business establishments of every kind whatsoever.' [Citation.]" (*Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 731, cert. den., 459 U.S. 858.) Today, it provides in pertinent part that "[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their sex . . . are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in *all business establishments of every kind whatsoever.*" (Emphasis added.)

In *O'Connor v. Village Green Owners Assn.* (1983) 33 Cal.3d 790, 795, this state's highest court quoting from *Burks v. Poppy Construction Co.* (1962) 57 Cal.2d 463, 468-469, noted that "'[t]he Legislature used the words 'all' and 'of every kind whatsoever' in referring to business establishments covered by the Unruh Act (Civ. Code, § 51), and the inclusion of these words without exception and without specification of particular kinds of enterprises, leaves no doubt that the term 'business establishments' was used in the broadest sense reasonably possible. The word 'business' embraces everything about which one can be employed, and it is often synonymous with 'calling, occupation, or trade, engaged in for the purpose of making a livelihood or gain.' [Citations.] The word 'establishment' as broadly defined, includes not only a fixed location, such as the 'place where one is permanently fixed for residence or business,' but also a permanent 'commercial force or organization' or 'a permanent settled position (as in life or business).'" [Citation.]"

The *Burks* court concluded that a real estate developer engaged in the business of developing and building tract houses which were offered for sale to the public through advertisements and the display of a model home operated a business establishment within the meaning of the Unruh

Act. In reaching this conclusion, the *Burks* court noted that “[t]he original version of the bill which was presented to the Legislature, in addition to affording protection in ‘business establishments,’ referred specifically to the right ‘to purchase real property’ and to other rights, such as the obtaining of ‘professional’ services.” (57 Cal.2d at p. 469.) Then in noting that the final version of the Unruh Act as enacted into law eliminated these specific references, the *Burks* court concluded that the “deletions can be explained on the ground that the Legislature deems specific references mere surplusage, unnecessary in view of the broad language of the act as finally passed.” (*Ibid.*)⁶

Eleven years later in *O'Connor*, the Supreme Court reaffirmed its reasoning in *Burks* stating: “The broadened scope of business establishments in the final version of the bill, in our view, is indicative of an intent by the Legislature to include therein all formerly specified private and public groups or organizations that may reasonably be found to constitute ‘business establishments of every type whatsoever.’ . . . Nothing in the language or history of its enactment calls for excluding an organization from its scope simply because it is nonprofit. [Citation.]” (33 Cal.3d at pp. 795-796.)

⁶ On January 21, 1959, the Unruh Act was introduced to the Legislature as Assembly Bill 594. The original version of that bill in pertinent part provided: “All citizens within the jurisdiction of this State, *no matter what their race, color, religion, ancestry, or national origin*, are entitled to the full and equal *admittance, accommodations, advantages, facilities, membership, and privileges in, or accorded by, all public or private groups, organizations, associations, business establishments, schools, and public facilities; to purchase real property; and to obtain the services of any professional person, group or association.*” (Emphasis in original.)

The *O'Connor* court then went on to conclude that a nonprofit homeowners' association of a condominium development violated the Unruh Act when it attempted to enforce an arbitrary age restriction in the covenants, conditions and restrictions of the development. In concluding that the nonprofit homeowners' association was a business establishment within the meaning of the Unruh Act, the court stated:

"The Village Green Owners Association has *sufficient businesslike attributes* to fall within the scope of the act's reference to 'business establishments of every kind whatsoever.' Contrary to the association's attempt to characterize itself as but an organization that 'mows lawns' for owners, the association in reality has a far broader and more businesslike purpose. The association, through a board of directors, is charged with employing a professional property management firm, with obtaining insurance for the benefit of all owners and with maintaining and repairing all common areas and facilities of the 629-unit project. It is also charged with establishing and collecting assessments from all owners to pay for its undertakings and with adopting and enforcing rules and regulations for the common good. In brief, the association performs all the customary business functions which in the traditional landlord-tenant relationship rest on the landlord's shoulders. A theme running throughout the description of the association's powers and duties is that its overall function is to protect and enhance the project's economic value. Consistent with the Legislature's intent to use the term 'business establishments' in the broadest sense reasonably possible [citation], we conclude that the Village Green Owners Association is a business establishment within the meaning of the act." (*O'Connor v. Village Green Owners Assn.*, *supra*, 33 Cal.3d at p. 796; emphasis added.)

In *Curran v. Mount Diablo Council of the Boy Scouts* (1983) 147 Cal.App.3d 712, appeal dismissed (1984) U.S. [82 L.Ed.2d 873, 104 S.Ct. 3574], Division Seven of this court reversed the judgment of dismissal entered in favor of defendant Boy Scouts after the trial court sustained its demurrer without leave to amend on the ground that plaintiff Curran had failed to state facts constituting a violation of the Unruh Act. (*Id.*, at pp. 734-735.) The *Curran* court concluded that plaintiff's complaint contained allegations showing that the Boy Scouts has certain "businesslike attributes"⁷ and hence is a business establishment prohibited from arbitrarily discriminating against homosexuals in the provision of its services. (*Id.*, at p. 730.) In light of plaintiff's further allegation that he had been expelled and excluded from the Boy Scouts organization because he was a homosexual (*Id.*, p. 718), the *Curran* court, concluded that because "the Unruh Act prohibits arbitrary discrimination against homosexuals" (*Id.*, at p. 734), plaintiff had in fact sufficiently pleaded a cause of action for violation of the Unruh Act. (*Ibid.*)

⁷ In its factual statement, the *Curran* court stated that plaintiff in his complaint alleged, among other things, "that the Boy Scouts of America is the owner of the copyright of the Boy Scouts' emblem and uniform, which are franchised to retail outlets throughout the United States. It derives great financial revenues from such franchising. In addition, the Boy Scouts of America is engaged in the book publishing business and publishes and sells a variety of books throughout the United States. Furthermore, defendant maintains a retail shop in Walnut Creek, California, where it engages in extensive commercial activities." (147 Cal.App.3d at p. 719.)

In *Isbister v. Boys' Club of Santa Cruz, Inc.* (1985) 40 Cal.3d 72, mod. 40 Cal.3d 585a, the Supreme Court after noting that the phrase "business establishments" includes "at least those facilities subject to the predecessor statute—i.e., 'place of public accommodation or amusement'" (*Id.*, at p. 79) concluded that the Boys' Club of Santa Cruz, Inc. (Boys' Club) is a "'place of public accommodation or amusement' and thus a 'business establishment' covered by the Act." (*Id.*, at p. 81.) The court further concluded that in the absence of evidence demonstrating a social need for the exclusion of girls from the facility, exclusion of local girls from membership in the Boys' Club was an arbitrary form of discrimination. (*Id.*, at pp. 88-90.)

In concluding that the Boys' Club is a "place of public accommodation or amusement" the *Isbister* court explained: "The Club certainly qualifies as a 'place of amusement.' Indeed, its primary function is to operate a permanent physical plant offering established recreational facilities which patrons may use at their convenience during the hours the Club is open. [¶] Moreover, the Club is classically 'public' in its operation. It opens its recreational doors to the entire youthful population of Santa Cruz, with the sole condition that its users be male." (40 Cal.3d at p. 81.)

The *Isbister* court also noted that the nonprofit organization had some "businesslike attributes," and explained that "like the nonprofit hospital . . . cited [in *O'Connor*] as an example of a nonprofit 'business establishment,' the Club employs a substantial paid staff and 'care[s] for an extensive physical plant' used for public purposes. [Citation.] [¶] . . . In these circumstances, the fact that its purposes and operations are not strictly commercial does not bar a conclusion that it is a 'business establishment' to which the Act applies." (40 Cal.3d at pp. 82-83; fns. omitted.)

With these legal principles in mind, we proceed to decide whether International is a business establishment. The resolution of this issue is one of law.⁸

II

In the case before us, the trial court specifically found that International, Rotary District 530 and Duarte were not business establishments with the meaning of the Unruh Act.

The question pivotal to this appeal is whether International is a business establishment, for it was this worldwide organization that discriminated against Duarte and its female members by revoking Duarte's charter and terminating its membership in International.

In resolving this issue, however, we must also examine the function and activities of Duarte and local clubs since these are dictated by International.

A

As stated earlier, International is a worldwide nonprofit corporate association of local Rotary clubs. It is permanently headquartered at the International headquarters building in Evanston, Illinois.

International's status as a nonprofit organization, does not preclude it from being a business establishment within the meaning of the Unruh Act. As the court in *O'Conner* stated, "Nothing in the language or history of its enactment calls for excluding an organization from its scope simply because

⁸We note that at the time judgment was rendered below the trial court did not have the advantage, as we do, of the subsequently decided important cases of *O'Connor*, *Koire*, *Isbister* and *Curran*.

it is nonprofit. [Citation.] Indeed, hospitals are often nonprofit organizations, and they are clearly business establishments to the extent that they employ a vast array of persons, care for an extensive physical plant and charge substantial fees to those who use the facilities." (33 Cal.3d at p. 796.)

Like the homeowners' association in *O'Connor*, International "in reality has a far broader and more businesslike purpose." (*O'Connor v. Village Green Owners Assn.*, *supra*, 33 Cal.3d at p. 796.) Its businesslike attributes are readily apparent from a brief overview of its organizational structure as well as certain of its administrative and financial concerns.

International is administered by the Board which consists of 17 members which controls and manages the affairs and funds of International. (Art. V, §§ 1 and 2 of the International Const., 1981 Manual of Proc., p. 240, 1978 Manual of Proc., p. 242.) The Officers of the organization are the "president, vice-president, other directors, general secretary, treasurer, district governors, and the president, immediate past president, vice president and honorary treasurer of Rotary International in Great Britain and Ireland." (Art. VI, § 1 of the International Const., 1981 Manual of Proc., p. 240, 1978 Manual of Proc., p. 242.)

International's principal sources of revenue "are per capita dues from clubs; convention and regional conference registration fees; charter fees from new clubs; sale of publications; subscriptions and advertising income from the magazine; license fees and royalty payments; and interest and dividends on investments." (1981 Manual of Proc., p. 104; 1978 Manual of Proc., p. 104.)

Members of the Board, committee chairpersons and other authorized persons are reimbursed by International for expenses incurred in furthering specified International busi-

ness and responsibilities. (1981 Manual of Proc., pp. 105-108; 1978 Manual of Proc., pp. 105-108.) Total reimbursement made to each District governor may not exceed the total amount of his budget appropriation. (1981 Manual of Proc., p. 106; 1978 Manual of Proc., p. 106.)

The general secretary of International is the managing officer of the organization and is its most senior full-time employee. The general secretary, together with an international staff of 350 individuals, constitutes the secretariat of International. The secretariat operates from what is known as the "Central Office" located in Evanston, Illinois and from branch offices in Switzerland, Sweden, Australia, Sao Paulo, and Japan. Rotary literature describes the secretariat "as a 'clearinghouse' for Rotary clubs worldwide, gathering, analyzing, translating, and disseminating Rotary information . . . [which] serves the officers and members of Rotary clubs, the R.I. Board of Directors, the committees, and district governors." (Rotary Basic Library, Focus on Rotary, vol. 1, p. 51.)

The Central Office is organized into six divisions. Rotary literature describes each of these six divisions as follows:

"1. *Administrative Services*, which serves the R.I. Board of Directors, implements legislative and other special procedures, and provides travel service for Rotary officers, committees, and personnel.

"2. *Communications*, which publishes the official magazine, assists the regional magazines, produces R.I. literature and audiovisual programs, and coordinates public relations, printing, and graphic arts operations.

"3. *Finance*, which supervises the fiscal operations of R.I. and The Rotary Foundation⁹ throughout the world.

"4. *Personnel and Office Services*, which administers personnel procedures and staff development, and provides secretarial, office, translation, and printing and duplicating services.

"5. *Program Development*, which develops and implements R. I. programs, plans and manages R. I. annual conventions and other international meetings, and coordinates research activities.

"6. *Service*, which promotes Rotary programs, membership growth, and provides service to district governors and Rotary clubs worldwide." (Rotary Basic Library, Focus on Rotary, vol. 1, pp. 52-54.)

Also part of the secretariat organization is the Finance and Investment Administrator who oversees all financial operations of International including investments. The Finance Committee of International "develops and recommends a budget to the R. I. Board of Directors. When adopted, the budget appropriations govern expenditures. A standing committee advises the Board on all investment matters and monitors the performance of professional investment managers." (Rotary Basic Library, Focus on Rotary, vol. 1, p. 56.)

"The expense of the secretariat in Evanston, Illinois, U.S.A., and branch offices covers such items as the salaries of the employees, operating expenses of R. I. headquarters building in Evanston, and rental of branch office space, stationery, supplies, postage, express, telegraph and telephone, electronic data processing, multi-copying, printing,

⁹ Rotary Foundation is a trust operated under the laws of the State of Illinois. (1981 Manual of Proc., p. 208; 1978 Manual of Proc., p. 213.)

pamphlets distributed gratis, furniture and equipment depreciation and repairs, insurance and taxes, auditing, general expense, etc." (1981 Manual of Proc., p. 108; 1978 Manual of Proc., p. 108.)

While the organizational structure and financial concerns of International are much more extensive and complex, this brief overview clearly establishes that International is an organization which exhibits substantial businesslike attributes.

International is an organization with permanent offices throughout the world. It utilizes vast numbers of staff to manage, supervise, coordinate and direct its activities. As of 1982, it was the parent organization for approximately 19,800 member clubs as well as the guiding force for more than 900,000 Rotarians. The divisions of the secretariat's central office each play a major and critical part in the administration of the organization and are clearly reflective of a businesslike hierarchy.

Commercial attributes and advantages, too, become obvious when the functions and responsibilities of the communications division of the secretariat are scrutinized. Said division is described in Rotary literature as a "publishing house" which produces and revises a wide range of Rotary books, manuals, pamphlets, and periodicals. Many publications and resource materials are issued in a number of different languages. Additionally the communications division "plays a vital role in preparing Rotary publications and audiovisual and public relations material for distribution to clubs, districts, and a worldwide membership." (Rotary Basic Library, Focus on Rotary, vol. 1, p. 60.)

One of the specific functions of the communications division is the publication of the official magazine of Rotary which is received by nearly one-half million readers and is

read by Rotarians and non-Rotarians alike. The Rotarian is published monthly in English and the Revista Rotaria is published bi-monthly in Spanish. (Rotary Basic Library, Focus on Rotary, vol. 1, p. 61.)

In the United States and Canada, membership in International is conditioned upon the active, senior active, and past service members of local clubs becoming and remaining paid subscribers to the Rotarian. For clubs outside the United States and Canada, membership in International, too, is conditioned upon their members subscribing to the Rotarian or an approved regional Rotary magazine. Compliance with the condition may be excused under certain circumstances. Subscription to the Revista Rotaria is mandatory for all members of local clubs in Spanish-speaking countries. (Art. XVIII of International Bylaws, 1981 Manual of Proc., pp. 296-297, see also pp. 104-105; art. XIX of International Bylaws, 1978 Manual of Proc., pp. 297-298, see also pp. 104-105.)

Commercial aspects are also apparent in the manner in which International grants authorization to use the Rotary emblem.

In response to various concerns and individuals who requested permission from International to manufacture and sell articles bearing the emblem of the Rotary, the Board "agreed to the establishment of a license fee and royalty procedure for the authorization of firms and individuals to manufacture, sell or use the Rotary emblem. [¶] The board authorized and instructed the general secretary to develop such a license fee and royalty procedure, including a form of agreement and license, such procedure to provide that, in consideration of authorization granted by R.I. to firms and individuals to manufacture, sell or use the Rotary emblem or items bearing the Rotary emblem, such firms and individuals shall be required to pay to R.I. a license fee and an

annual royalty on the annual gross sales of Rotary emblem merchandise." (1981 Manual of Proc., p. 150; 1978 Manual of Proc., p. 152.)

Each year International publishes an official directory "containing a list of all the clubs, the names and addresses of their presidents and secretaries, time and place of meetings, names and addresses of the officers and committeemen of R.I., and other information appropriate to such a publication." (1981 Manual of Proc., p. 171; 1978 Manual of Proc., p. 175.) While the manual of procedure purports to prescribe the use by a Rotarian of the official directory for commercial reasons, part of the official directory, "is a hotel directory carrying the advertising cards of a partial list of hotels which are owned or operated by Rotarians or which are meeting places or headquarters of Rotary clubs." The directory also includes "a list of those firms which have been licensed by R.I. to manufacture and/or sell specifically approved items being the Rotary, Rotaract or Interact name and emblem." (1981 Manual of Proc., p. 171; 1978 Manual of Proc., p. 175.)

The commercial benefits engendered by the advertisement section of the official directory are obvious. We conclude, therefore, that although International is a nonprofit organization it has sufficient businesslike attributes to render it a business establishment under the Unruh Act.

B

There is no doubt that there are substantial business benefits to be gained by belonging to an organization such as Rotary which is comprised of community business and professional leaders. As a matter of fact, the trial court recognized that such benefits derived from membership in Rotary but found them to be "incidental to the principal

purposes of the association which are to promote fellowship for *non-commercial*, and *non-economic* objectives and to secure the voluntary uncompensated participation of business and professional men" in services and activities performed on a local, national and international level. (Emphasis in original.)

The trial court, however, mistakenly discounted the significance of these benefits. Substantial business benefits regardless of whether they are of a primary or secondary concern must be considered when deciding whether an organization is bound by the Unruh Act.

Volume 1 of the Rotary Basic Library, Focus on Rotary, makes clear that the primary purpose for the formation of the Rotary movement was commercial advantage. (P. 5.)

From a discussion held among four men "came the idea of a men's club whose membership would be limited to one representative from each business and profession. Weekly meetings were to be held at each member's place of business in turn. The rotation of meetings was designed to acquaint the members with one another's vocations and to promote business."

"The earliest meetings of the 'Rotarians' were held in the name of 'acquaintance' and good fellowship, and they were designed to produce increased business for each member." (Rotary Basic Library, Focus on Rotary, vol. 1, p. 2.) The men who joined were "motivated primarily by the business they expected to receive from other club members (Rotary Basic Library, Vocational Service, vol. 3, pp. 6-7.)

Further, Rotary's literature itself makes clear that "Rotary derives its name from the historic fact that the first Rotary club in Chicago rotated its meeting site to a different member's place of business each week, thus underscoring

the vocational foundation of its philosophy." (See International publication No. 501.)

The trial court found that the classification principle of selecting one representative from each business and profession "originated many years ago from self-seeking commercial purposes" but that the Rotary has for many years abandoned the use of the classification principle "as a device for encouraging preferential business relationships among Rotarians." We note, however, that the classification principle still exists in Rotary, and that International now states that "[t]he purpose of this 'classification' system is to ensure that the members of each club comprise a true cross-section of their community's business and professional life or endeavor." (Rotary Basic Library, Focus on Rotary, vol. 1, p. 2.)

Rotary literature states that as the organization grew, its founders began to realize that fellowship for commercial advantage and business reciprocity was not the foundation upon which the organization could endure. (Rotary Basic Library, Focus on Rotary, vol. 1, p. 2; Community Service, vol. 4, p. 3.) Accordingly, Rotary "deepened its purpose and developed its ideal of 'Service Above Self,' which it expects its members to carry into the marketplace, the office and factory, the community at large and into other lands." (Rotary Basic Library, Focus on Rotary, vol. 1, p. 2.)

Today, official policy promulgated by International through its Board "specifically prohibits any attempt to use the privilege of membership for commercial advantage." (Rotary Basic Library, Focus on Rotary, vol. 1, p. 2.) The mere fact, however, that the use of Rotary membership for commercial gain is proscribed in a written policy statement promulgated by the Board does not mean that commercial advantages and business benefits have in actuality ceased to flow from Rotary membership or that they are not signifi-

cant motivating forces in joining local clubs. Accordingly, the value and import of the written policy, if any, can only be ascertained by measuring compliance with this proscription.

That Rotarians consider membership in a local club to have a relation to business is established by the evidence presented below. Richard Key who was the president of Duarte at the time it was ousted from International testified that he was an assistant school superintendent and that he joined Duarte because all the superintendents he knows belong to Rotary clubs and benefited by becoming acquainted with business and industrial leaders in the community. He pays for his dues personally and then deducts them as a business expense on his tax forms. He remembered that one year he was audited, but the deduction of his Rotary dues was allowed.

William Brooks worked at the City of Hope Medical Center. He testified that he joined Duarte because the administration of the City of Hope Medical Center felt that its organization should be represented in a service club. He testified that his dues were paid by the City of Hope and that he took expenses related to his membership in Duarte as a business expense.

Kenneth Caresio, the city manager of Duarte, in testifying expressed his reasons for joining Duarte as follows: "I felt that professionally it would give me the opportunity to meet with the business community both of our city as well at the business community in the adjacent area." He further testified that at the time he joined "the city was pushing very hard for economic development and we felt that it would help out the city." Mr. Caresio also testified that his predecessor was a member of Duarte and that city managers belonged to local Rotary clubs. He candidly stated that "it

seems to be an unwritten tradition that city managers join the Rotary clubs." His dues were paid by the city.

Herbert Pigman, the general secretary of International, in his deposition; too, testified that it was a condition of his employment in International that he be a member of a Rotary club and that he deducted his dues to the Evanston Rotary Club to which he is a member as a business expense.

Dr. Jacob Frankel testified by stipulation that he is the president of California State College, Bakersfield and a member of the Rotary Club of Bakersfield. It was his belief that Rotary membership was essential for a college president to raise funds. All members of his cabinet are members of various local Rotary clubs and were encouraged to join as part of their employment. A former treasurer of the Bakersfield Rotary, Dr. Frankel noted that out of the club's 200 members only 8 or 10 paid their dues personally. The dues of all other members were paid by their companies or businesses.

This evidence leaves no doubt that business concerns are a motivating factor in joining local clubs. While Rotarians perform numerous and commendable charitable services at the local, national and international levels, the evidence establishes that there are business benefits enjoyed and capitalized upon by Rotarians and their businesses or employers.

The evidence simply does not support the trial court's finding that these business advantages are merely incidental. By limiting membership in local clubs to business and professional leaders in the community, International has in effect provided a forum which encourages business relations to grow and which enhances the commercial advantages of its members.

We therefore conclude that Duarte, too, is a business establishment within the meaning of the Unruh Act.

III

Underlying the trial court's finding and conclusion that neither International nor Duarte is a business establishment is its finding that these organizations are private and hence not governed by the Unruh Act.

Relying on Horowitz, *The 1959 California Equal Rights in "Business Establishments" Statute—A Problem in Statutory Application* (1960) 33 So. Cal. L. Rev. 260, 281, 289-290, the trial court concluded that the legislative history of the Unruh Act precludes its application to membership "in private organizations, particularly where, as here, that membership connotes substantial personal and social interactions with other members." We believe that conclusion of the trial court was erroneous.

While the Supreme Court in *O'Connor* made it clear that "[t]he broadened scope of business establishments in the final version of the bill . . . is indicative of an intent by the Legislature to include therein all formerly specified *private* and public groups or *organizations* that may reasonably be found to constitute 'business establishments' of every type whatsoever" (33 Cal.3d at pp. 795-796, emphasis added), that court in *Isbister* declared that the Unruh Act "does not govern relationships which are truly private." (40 Cal.3d at p. 84; fn. 14.) It described "truly private" relationships as "'continuous, personal, and social'" and which "take place more or less outside 'public view.'" (*Ibid.*, citing Horowitz, *supra*, 33 So. Cal. L. Rev., at pp. 281, 287, 289.)

Membership in International is far from "continuous, personal and social." International's membership consists of at least 19,800 separate local Rotary clubs and is non-

gratuitous. Individual Rotarians are not members of International yet they are compelled to "make up" meetings they have missed at Rotary clubs elsewhere where they are not members. In fact, International is more of an organizational director, regulator and supervisor. A local Rotary club can be formed only upon the approval of International. All of its members must abide by the rules set forth by International in its constitution and by-laws. Failure of a local club to comply with said rules could result in the revocation of its charter. Additionally, as found by the trial court, "[i]f a local club persists in an unsatisfactory level of membership, attendance, or community service, efforts are made to secure the voluntary termination of its charter." Involuntary termination of a club's charter is determined by International to become necessary at times.

With respect to local clubs, the community services performed by local Rotarians clearly take place in "public view." This is also true of most of the activities of District and International. In fact, Rotary literature states that "[e]very Rotary club must have its windows and doors open to the whole world." (Rotary Basic Library, Focus on Rotary, vol. 1, p. 69.)

While there is personal and social interaction among Rotarians, the commercial aspects of the relationship clearly preclude a conclusion that they are "truly private." Additionally, Paul Bryan, a former district governor of Rotary District 530, testified that turnover is high in local clubs. He stated that in many clubs the turnover is about 10 percent a year and that turnover is as high as 20 percent in larger clubs. The relationship among Rotarians is not "continuous, personal and social." We conclude therefore that the trial court's finding and conclusion that International and Duarte were "private" organizations immune from the re-

medial grasp of the Unruh Act is not supported by substantial evidence.

IV

As "business establishments," International and Duarte are prohibited from arbitrarily discriminating in the provision of its "accommodations, advantages, facilities, privileges, or services." (§ 51.)

Because we conclude that membership in an organization constituting a business establishment is clearly an "advantage" or "privilege" under the Unruh Act, exclusion from or termination of membership arbitrarily on the basis of sex is prohibited.

Additionally, a variety of goods, privileges and services flow from membership in a local Rotary club. These include the official Rotary magazine, numerous Rotary publications, the right to wear or display the Rotary emblem and to attend "business relation conferences" wherein the Rotarian "learns management techniques that help improve his own business or professional skills" and "receives the inspiration of discussing business problems with experts in his own or related fields."

The trial court's finding that neither International nor Duarte is "an organization engaged in providing goods, services, and facilities" is therefore unsupported by substantial evidence in the record on appeal.

V

We next address the trial court's finding that "[t]o force Rotary International by judicial intervention to permit local clubs in California to admit women members contrary to its democratically reaffirmed male-only membership policy

would be inequitable" because "such an injunction would create a substantial risk of irreparable harm to the national and international associational integrity of Rotary without conferring a commensurate or even a material economic, social or other benefit upon the plaintiff women in particular, or women in general."

A

In finding that a ruling prohibiting International from enforcing its male-only-membership restriction "would comprise a material interference with deeply felt choices of associational preference of many Rotarians" and "would materially affect the operation of Rotary not merely outside the State of California but outside the United States," the trial court stated:

"The Court accepts the testimony herein of Rotary's General Secretary [Mr. Pigman] that this issue is of widespread and deep concern among Rotarians both in the United States and in widely different cultures throughout the world. The Court also accepts his testimony that the continued successful worldwide operation of Rotary is materially dependent on a delicate balance of divergent attitudes in diverse cultures, and that judicial interference with this balance, as reflected by the votes in Rotary's Council on Legislation, would risk a material and harmful disruption of the existing cooperative integrity of Rotary International both inside and outside the State of California."

We have reviewed Mr. Pigman's testimony and conclude that while it supports the trial court's finding that the male-only-membership policy is valued by a substantial majority of Rotarians throughout the world and that, as a rule that has been internally agreed upon, it has enabled the organization to work effectively on a worldwide basis, it does not

support a finding that the admission of women into the local Rotary Club of Duarte would cause the downfall of the District or International or seriously interfere with Rotary's objectives.

In fact, Mr. Pigman's inability to decisively resolve the question of "what would be the impact on Rotary if a ruling prohibiting the organization from enforcing its male-only constitutional provisions," was unequivocally reflected when he testified, "It is difficult for me to conjecture or discern what might happen to Rotary International if its ability to agree upon its own rules of procedures were to be dictated by decisions, forces external to its own operations."

Moreover, arbitrary and blatant acts of sex discrimination against the women of this state which violate the Unruh Act will not be tolerated merely because refusing to tolerate them may have an impact or effect on business establishments situated beyond our territorial boundaries.

B

The trial court explained plaintiffs' failure to establish damages as follows:

"The Court finds that plaintiffs have not demonstrated that membership in the Duarte Club prior to its expulsion from Rotary comprised a substantial source of business contacts. In fact, Duarte was having difficulty attracting members. The Court further finds that the expulsion of Duarte from Rotary did not harm it as a vehicle for making business contacts. In fact the size of its membership and the vigor of its activities thereafter increased. The three female members of Duarte, *by their own admission*, did not join Duarte for professional benefits and disclaim any harm to their careers by reason of expulsion of Duarte by Rotary. The Court does not accept as true the speculation that at some

time in the future their careers *might* suffer from Rotary's male-only policy. This Court is not persuaded by the evidence introduced in this case that the 'male-only' membership restriction of Rotary has deprived any women of any material or substantial economic advantage . . ." (Emphasis in original.)

None of these particular findings constitutes a basis on which injunctive relief may properly be denied in this case. We have already concluded that International and Duarte are business establishments and as such they are prohibited from discriminating against members and potential members on the basis of sex.

In this case, Duarte admitted Bogart, Elliot and Freitag into membership. In revoking Duarte's charter because it admitted women into membership and refused to expel them, International's Board clearly violated the Unruh Act. The Unruh Act proscribes not only International's direct discrimination against women but also discrimination against Duarte on account of its association with women. (See *Winchell v. English*, *supra*, 62 Cal.App.3d at p. 129.) Moreover, as the discrimination was arbitrary, damages are presumed.

In *Koire v. Metro Car Wash*, *supra*, 40 Cal.3d 24, a majority of the California Supreme Court, in rejecting the argument that sex-based price discounts cause no injury to either men or women, declared "that by passing the Unruh Act, the Legislature established that arbitrary sex discrimination by business is *per se* injurious." (*Id.* at p. 33.) The *Koire* court noted that "[s]ection 52 provides for minimum statutory damages of \$250 for *every* violation of section 51, *regardless* of the plaintiff's actual damages." (*Ibid.*, fn. omitted; emphasis in original.) Moreover "[a]lthough the Unruh Act makes no express provision for injunctive relief, that remedy as well as damages may be available to an

aggrieved person.' ” (*Id.*, at p. 28, fn. 5, quoting *Burks v. Poppy Construction Co.*, *supra*, 57 Cal.2d at p. 470.)

The ill effects of discrimination against the individual as well as on society are well recognized. Our nation's Supreme Court in *Roberts v. United States Jaycees* (1984) 468 U.S. ____ [82 L.Ed.2d 462, 104 S.Ct. 3244], succinctly stated that it “has frequently noted that discrimination based on archaic and overbroad assumptions about the relative needs and capacities of the sexes forces individuals to labor under stereotypical notions that often bear no relationship to their actual abilities. It thereby both deprives persons of their individual dignity and denies society the benefits of wide participation in political, economic, and cultural life.” (82 L.Ed.2d at p. 476.)

VI

International argues that forcing it to excuse compliance with the male-only-membership policy would violate the associational freedoms afforded it by the federal Constitution.

In *Roberts v. United States Jaycees*, *supra*, the United States Supreme Court ruled that application of the Minnesota Human Rights Act to prevent sex discrimination perpetuated by membership policies of the United States Jaycees, a nonprofit membership corporation, did not violate that organization's freedom of intimate or expressive association.

It is well recognized that freedom of intimate association is a fundamental element of personal liberty and “because the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of highly personal relationships a substantial measure of

sanctuary form unjustified interference by the State.” (82 L.Ed.2d at p. 471.)

In discussing freedom of intimate association, the *Roberts* court noted that among the highly personal relationships that are entitled to this constitutional shelter “are those that attend the creation and sustenance of a family”—marriage, childbirth, the raising and educating of children and living with relatives. The *Roberts* court further explained:

“Family relationships, by their nature, involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one’s life. Among other things, therefore, they are distinguished by such attributes as relative smallness, a high degree of selectivity in decisions to begin and maintain the affiliation, and seclusion from others in critical aspects of the relationship. As a general matter, only relationships with these sorts of qualities are likely to reflect the considerations that have led to an understanding of freedom of association as an intrinsic element of personal liberty. Conversely, an association lacking these qualities—such as a large business enterprise—seems remote from the concerns giving rise to this constitutional protection. Accordingly, the Constitution undoubtedly imposes constraints on the State’s power to control the selection of one’s spouse that would not apply to regulations affecting the choice of one’s fellow employees. [Citations.]

“Between these poles, of course, lies a broad range of human relationships that may make greater or lesser claims to constitutional protection from particular incursions by the State. Determining the limits of state authority over an individual’s freedom to enter into a particular association therefore unavoidably entails a careful assessment of where that relationship’s objec-

tive characteristics locate it on a spectrum from the most intimate to the most attenuated of personal attachments. [Citation.] We need not mark the potentially significant points on this terrain with any precision. We note only that factors that may be relevant include size, purpose, policies, selectivity, congeniality, and other characteristics that in a particular case may be pertinent. In this case, however, several features of the Jaycees clearly place the organization outside of the category of relationships worthy of this kind of constitutional protection." (82 L.Ed.2d at pp. 472-473.)

The *Roberts* court concluded that the Jaycees was not entitled to the constitutional protection afforded by the freedom of intimate association because local chapters of the Jaycees were large in size and membership in the organization was unselective.

In the present case, the trial court found that the "primary purpose of Rotary is to encourage a fellowship among business and professional men representing a diverse cross-section of the business and professional activities within the local community" and "to promote a variety of voluntary, civic, eleemosynary, and charitable 'service' activities" on local, national and international levels. The trial court further found that membership is selective since it "is neither solicited from nor is it available to the public generally."

In reliance on these findings, International contends, that unlike the Jaycees, it is entitled to the protection of the freedom of intimate association. We disagree.

While the membership criteria set forth by International and by which local clubs must abide is selective, the immense size of International and the number of Rotarians throughout the world is hardly indicative of an intimate relationship. Moreover, while fellowship and service to the community play a very important part in the Rotary organi-

zation, the business benefits and commercial advantages to be gained are also clearly an inducement for the business and professional leaders of the community to join.

Additionally, Rotarians are required to attend weekly meetings. When a Rotarian misses a meeting he is required to make up that meeting by attending the meeting of another club anywhere in the world. International's own literature states that "[a]s a member of the Rotary family, [the individual Rotarian] has a universally recognized right of entry into any Rotary club meeting anywhere in the world. . . ." (Rotary Basic Library, Focus on Rotary, vol. 1, p. 68.) It follows then that that club may not, selectively or otherwise, exclude a foreign Rotarian's attendance at its meetings. The trial court itself found that "[i]nternational travel results in a material amount of club visitation by foreign Rotarians." By its own requirements, then, congeniality on a worldwide level is encouraged. From these features we conclude that International and Rotary District 530 lack the distinctive characteristics that might afford them the constitutional protection to compel local Rotary clubs to exclude women. (82 L.Ed.2d at p. 474.)

With respect to the freedom of expressive association the *Roberts* court stated:

"Government actions that may unconstitutionally infringe upon this freedom can take a number of forms. Among other things, government may . . . try to interfere with the internal organization or affairs of the group. [Citation.] By requiring the Jaycees to admit women as full voting members, the Minnesota Act works an infringement of the last type. There can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire. Such a regulation may impair the ability of the original

members to express only those views that brought them together. Freedom of association therefore plainly presupposes a freedom not to associate. [Citation.]

"The right to associate for expressive purposes is not, however, absolute. Infringements on that right may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms." [Citations.]" (82 L.Ed.2d at pp. 474-475.)

The *Roberts* court then concluded "that Minnesota's compelling interest in eradicating discrimination against its female citizens justifies the impact that application of the statute to the Jaycees may have on the male members' associational freedoms" (82 L.Ed.2d at P. 475) and that the state interest was being furthered by the least restrictive means as the Jaycees failed to demonstrate that the Minnesota Act "imposes any serious burdens on the male members' freedom of expressive association." (*Id.*, at p. 477.)

A similar conclusion is mandated in this case. To the extent that International's freedom of expressive association is involved, infringement of this right is clearly justified by this state's compelling interest in abolishing sex discrimination by business establishments.

Like the Minnesota Act, the Unruh Act "does not aim at the suppression of speech, does not distinguish between prohibited and permitted activity on the basis of viewpoint, and does not license enforcement authorities to administer the statute on the basis of such constitutionally impermissible criteria." (82 L.Ed.2d at p. 475.) It does not require International to change its objectives or to open membership

to the entire public at large, nor does it invalidate its selective membership requirements.

We therefore conclude that application of the Unruh Act to International does not abridge its freedom of intimate or expressive association.

VII

The trial court noting that "[t]here has been neither a showing [nor] a claim that Illinois law has been violated, [nor] have plaintiffs demonstrated any economic or other reasons why, under well-settled constitutional principles of interstate comity, the law of Illinois should not be the sole test of that corporation's internal membership rules" concluded "that these extra-territorial considerations alone are sufficient to decline granting the drastic injunctive relief sought by plaintiffs."

Whether or not International's male-only-membership policy violates Illinois law is not controlling in this case. Nothing we have said prevents, or can prevent, International from adopting or attempting to enforce membership rules or restrictions outside of this state or lawful restrictions inside this state. Neither notions of interstate comity nor the full, faith and credit clause of the federal Constitution, however, compel us to permit International, a foreign corporation, to enforce its male-only-membership policy in this state in violation of the Unruh Act. Neither 5 Witkin, Summary of Cal. Law (8th ed. 1974) Constitutional Law, section 289 nor *Order of Travelers v. Wolfe* (1947) 331 U.S. 586, upon which the trial court relied compel a contrary conclusion. Consequently, we conclude that extra-territorial concerns do not justify the denial of injunctive relief.

VIII

The trial court found that because "Duarte admitted women to membership in knowing violation of Rotary's membership restriction" it was guilty of unclean hands thereby precluding the granting of injunctive relief.

The clean hands doctrine has no applicability in this case. "The maxim 'he who comes into equity must come with clean hands' should not be invoked when the act sought to be enjoined is against public policy." (*Jomicra, Inc. v. California Mobile Home Dealers Assn.* (1970) 12 Cal.App.3d 396, 402.)

Public policy in this state strongly supports the abolition of discrimination on the basis of sex. This policy is effectuated, in part, by the Unruh Act which expressly proscribes sex discrimination by business establishments. (*Koire v. Metro Car Wash, supra*, 40 Cal.3d at p. 36.) Insofar as the act sought to be enjoined in this case is arbitrary sex discrimination violative of the Unruh Act, the trial court abused its discretion in denying injunctive relief on an unclean hands theory.

IX

"Granting or denying an injunction is within the sound discretion of the trial court and will be upheld on appeal absent an abuse of discretion. Discretion is abused when a court exceeds the bounds of reason or contravenes uncontradicted evidence." (*Jessen v. Keystone Savings & Loan Assn.* (1983) 142 Cal.App.3d 454, 458.)

The injury caused and perpetuated by International's sex discrimination is both "great and irreparable" and cannot adequately be compensated by money. (See Code Civ. Proc., § 526, subds. (2) and (4).) This conclusion, together

with our foregoing discussion and conclusions, establishes that the trial court abused its discretion in denying Duarte, Freitag and Elliot injunctive relief.

Rotary literature describes "The 4-Way Test" as "a yardstick for living" which "aims to encourage the ethical instincts in every person and constitutes a simple and practical guide for people of all cultures." (Rotary Basic Library, Vocational Service, vol. 3, p. 39.)

Rotary advocates application of the following 4-way test to the things "we think, say or do":

1. Is it the TRUTH?
2. Is it FAIR to all concerned?
3. Will it build GOODWILL and BETTER FRIENDSHIPS?
4. Will it be BENEFICIAL to all concerned?

While the Rotary organizations are in large part very well motivated and accomplish much good, International's discriminatory policy towards women clearly violates this test and evidences International's failure to practice toward women the fairness "to all" that it preaches.

X

In light of our conclusion that International violated the Unruh Act and that injunctive relief should have been granted, we need not, and do not, decide whether article 1, section 8 of the California Constitution requires state action or whether International's male-only-membership policy violates that constitutional provision.

The judgment is reversed. The matter is remanded to the trial court with directions to enter a new and different judgment in favor of Rotary Club of Duarte mandating the

Board of Directors of Rotary International and Rotary District 530 to reinstate Rotary Club of Duarte's charter thereby reinstating it as a member of Rotary International and Rotary District 530 and permanently enjoining Rotary International and Rotary District 530 from enforcing or attempting to enforce its male-only-membership restriction against Rotary Club of Duarte.

CERTIFIED FOR PUBLICATION

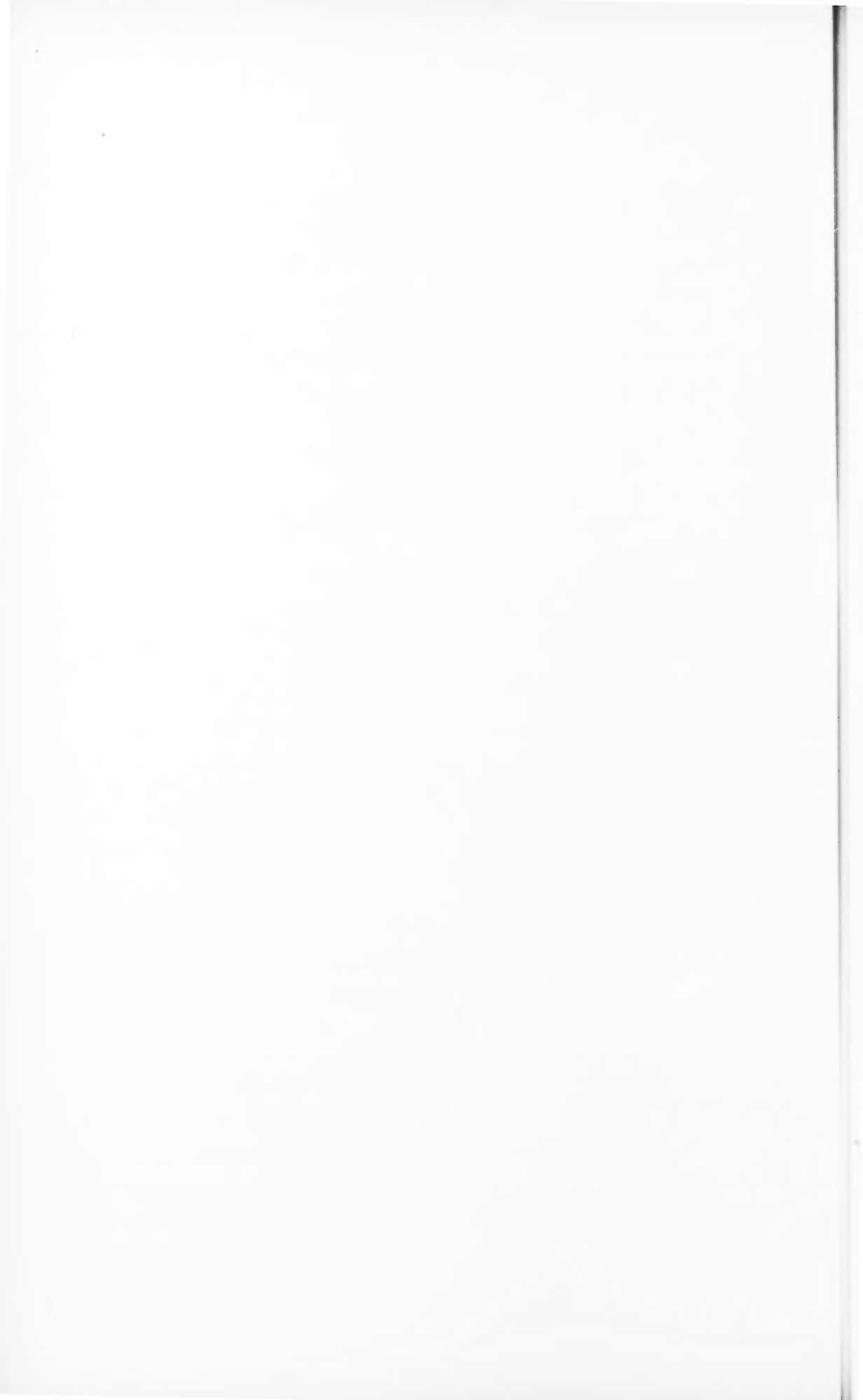
McCLOSKEY, J.

We concur:

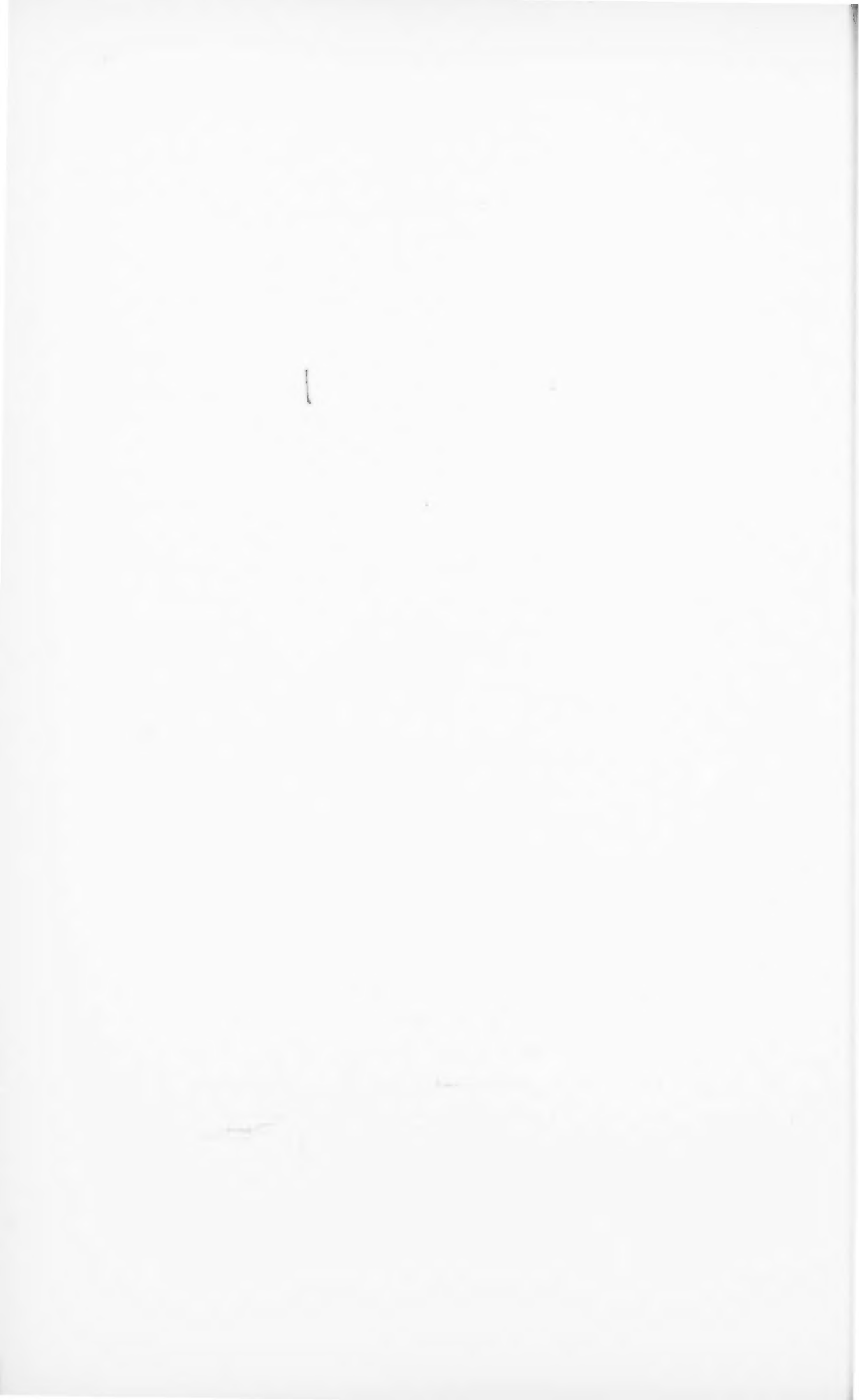
WOODS, P. J.

SHIMER, J.*

* Assigned by the Chairperson of the Judicial Council.



APPENDIX D



D-1

ORDER DENYING REVIEW
AFTER JUDGMENT BY THE COURT OF APPEAL
2nd District, Division 4, No. B001663
IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA

IN BANK

ROTARY CLUB OF DUARTE *et al.*

v.

BOARD OF DIRECTORS OF ROTARY INTERNA-
TIONAL *et al.*

Respondents' petition for review DENIED.

BIRD
Chief Justice



APPENDIX E



DARLING, HALL & RAE
WM. JOHN KENNEDY
1900 CITY NATIONAL BANK BUILDING
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ATTORNEYS FOR DEFENDANTS-RESPONDENTS.

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA
SECOND APPELLATE DISTRICT,
DIVISION FOUR

ROTARY CLUB OF DUARTE, *et al.*,
Plaintiffs and Appellants,

vs.

BOARD OF DIRECTORS OF
ROTARY INTERNATIONAL, *et al.*,
Defendants and Respondents.

2d CIV. NO. B
001663

Superior Court
No. C244753

NOTICE OF
APPEAL TO
THE UNITED
STATES
SUPREME
COURT

NOTICE IS HEREBY GIVEN that Defendants/ Appellees herein Board of Directors of Rotary International and Rotary District 530, appeals to the Supreme Court of the United States from the judgment of this Court issued March 17, 1986, and amended on April 9, 1986. A timely Petition for Review to the California Supreme Court was denied on June 18, 1986.

This Appeal is taken pursuant to Title 28, United States Code, § 1257(2) within the time provided in 28 U.S.C. § 2101(c) and United States Supreme Court Rules 11, 12, 20 and 21.

E-2

The Appeal contends that the decision violates Defendant/Appellees' rights of freedom of association and due process under the First and Fourteenth Amendments to the United States Constitution.

DATED: July 14, 1986.

DARLING, HALL & RAE
WM. JOHN KENNEDY

By: WM. JOHN KENNEDY
Wm. John Kennedy

PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action or proceeding. My business address is 606 South Olive Street, Suite 1900, Los Angeles, California 90014-1521. On July 15, 1986 I served the within NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT on the interested parties in this action or proceeding by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California, addressed as follows:

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JOHN K. VAN DE KAMP
Attorney General
Department of Justice of the State of California
3580 Wilshire Boulevard, Room 800
Los Angeles, California 90010

EXECUTED on July 15, 1986 at Los Angeles,
California.

I declare under penalty of perjury that the foregoing is
true and correct.

Laura G. Canizares

APPENDIX F

DARLING, HALL & RAE
WM. JOHN KENNEDY
400 PACIFIC MUTUAL BUILDING
523 WEST SIXTH STREET
LOS ANGELES, CALIFORNIA 90014
627-8104
ATTORNEYS FOR DEFENDANTS

SANFORD K. SMITH
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ATTORNEYS FOR PLAINTIFFS

SUPERIOR COURT OF THE STATE OF
CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ROTARY CLUB OF DUARTE, MARY
LOU ELLIOTT, AND ROSEMARY
FREITAG,

Plaintiffs,

v.

BOARD OF DIRECTORS OF RO-
TARY INTERNATIONAL, ROTARY
DISTRICT 530, PAUL G. BRYAN,
OLIVER BATCHELLER, and DOES I
through XX,

Defendants.

CASE NO.
C 244 753

STIPULATION
REGARDING
CERTAIN UNDIS-
PUTED FACTS
AND RELATED
PORTIONS OF
THE RECORD

The parties hereto, through their attorneys of record,
stipulate that the facts stated in Parts I, II and III hereof

(including the contents of the identified Exhibits) should be regarded as true.

The discovery identified in Part IV truly defines the particularities of plaintiffs' factual contentions, in response to which defendants have shaped their trial preparation. However, its inclusion in this stipulation does *not* connote agreement by defendants with these factual contentions, many of which are disputed.

I

STRUCTURE OF ROTARY INTERNATIONAL

Rotary International is an Illinois not-for-profit corporation. Membership in that corporation serves as the vehicle for the worldwide association of local Rotary clubs. In August 1982 there were approximately 19,788 of such clubs worldwide. The individual members of those local clubs totaled approximately 907,750 men.

Further factual specifics of the Rotary movement which are not in dispute are found in the following documents which are submitted concurrently herewith and incorporated herein by reference:

1. The transcript of the deposition of Herbert A. Pigman, General Secretary of Rotary International, taken July 19, 1982 (except for those portions to which specific objections were made and appear in that transcript).
2. "Manuals of Procedure" dated 1975, 1978 and 1981 comprising Exhibits A1, A2 and A3 to Mr. Pigman's deposition.
3. "Rotary Basic Library" (seven paperback volumes in cardboard container) comprising Exhibit B to Mr. Pigman's deposition.

4. "Extension Manual No. 8108" comprising Exhibit C to Mr. Pigman's deposition.

5. "Summary of Service Activities", 1977-1978, Eight Rotary Clubs in Vicinity of Duarte, California, U.S.A. (Rotary District 530), comprising Exhibit D to Mr. Pigman's deposition.

6. True copies of miscellaneous reports to Rotary International by District 530 governor, comprising Exhibit E to Mr. Pigman's deposition.

7. August 1980 issue of Rotarian Magazine, comprising Exhibit F to Mr. Pigman's deposition.

II

THOSE PORTIONS OF FACTUAL CHRONOLOGY RELATING TO THE DUARTE CLUB'S EXPULSION WHICH ARE NOT IN DISPUTE

For several years prior to 1977, the plaintiff Rotary Club of Duarte (hereinafter "Duarte"), and successive governors of Rotary District 530, had been concerned that Duarte's membership had at times fallen below 20 members. Duarte had discussed among its own members that such membership growth objectives might be facilitated if Rotary International changed its existing policy to permit local clubs to admit female members.

In March 1977 Duarte unanimously voted to urge the District 530 governor to support efforts to modify the "male only" constitutional restrictions at the June 1977 meeting in San Francisco of Rotary's legislative council. On March 7, 1977, Duarte's Vice President Richard Kay transmitted that request to District Governor Paul E. Lippold by a letter, the text of which appears in Exhibit G attached hereto and

incorporated herein. In June 1977 the Rotary legislative council rejected proposals to amend the "male only" constitutional provision, and at all pertinent times thereafter Duarte was aware of the rejection.

On July 1, 1977, Defendant Paul Bryan succeeded Paul Lippold as Rotary's District 530 governor. In July 1977 Mr. Bryan visited a regular weekly meeting of Duarte. What occurred at that visit will be the subject of testimony at trial.

At a time prior to July 1977, Duarte voted to admit Donna Bogart as an active regular member. During the period October-November 1977, Duarte admitted plaintiffs Mary Lou Elliott and Rosemary Freitag as active regular members. Prior to their admission to Duarte, all three women were informed by Duarte that the membership provisions of Rotary did not then allow women members and that Duarte was attempting to obtain a modification of that membership restriction. Prior to its hereinafter described termination by Rotary International, Duarte did not admit additional female members.

At all pertinent times herein, Donna Bogart was employed as an elementary school principal by the Duarte Unified School District; Mary Lou Elliott was employed as a junior high school principal by the Duarte Unified School District; and Rosemary Freitag was employed as a regional community services coordinator by the San Gabriel Valley Mental Health Region. All three women at their depositions herein stated that they did not join the Duarte Club for the express purpose of promoting their business or professional careers. Additionally, all three women, at their depositions, stated that they did not feel that they had been impeded in the pursuit of their business and/or professional careers or financially damaged by any actions of Rotary International.

On December 4, 1977, Duarte held a dinner celebrating its 25th anniversary in Rotary. Several Rotarians from surrounding clubs and several past district governors attended. All three of the aforesaid women members also attended. As a result of that dinner meeting, the headquarters of Rotary International in Evanston, Illinois received complaints concerning the admission by Duarte of female active members.

Thereafter, during December 1977 and January 1978, Rotary International advised Duarte that it was in violation of the membership restrictions of Rotary and must terminate its female members if it desired to continue as a part of Rotary International. All three women offered to resign. However, Duarte voted not to ask for their resignations or to otherwise discontinue their membership, and so informed Rotary International.

On March 27, 1978, in full compliance with its procedural rules pertaining to such matters, Rotary International terminated the membership of Duarte. Annexed hereto are true copies of the following documents pertaining to such membership termination:

1. A transcript of the hearing held by the Rotary Board of Directors on February 23, 1978, together with the writings submitted by Duarte at that time (Exhibit H hereto).

2. The text of Decision 241 of Rotary International's Board of Directors following said hearing (Exhibit I hereto).

3. The text of Duarte's telegram of March 27, 1978 specifying its grounds for appealing the decision of Rotary's Board of Directors (Exhibit J hereto).

4. The text of Duarte's written appeal from the decision of the Rotary Board of Directors (Exhibit K hereto).

5. A transcript of the hearing on Duarte's appeal presented in Tokyo, Japan on May 9, 1978 (Exhibit L hereto).

Duarte engaged its present counsel on March 1, 1978.

Rotary International has tendered to Duarte checks comprising refunds for all per capita dues paid by Duarte on behalf of its three female members. On advice of counsel, Duarte has not cashed such checks.

Since the filing of this lawsuit, Donna Bogart and Rosemary Freitag have voluntarily ceased to be members of Duarte. Mary Lou Elliott continues as a member of the club.

On the advice of counsel, Duarte has refused the demand of Rotary International to return its charter document. Over the objections of Rotary International, Duarte, on its club stationery and otherwise, publicly refers to itself as the "Ex-Rotary Club of Duarte" and at its weekly meetings Duarte uses a podium with its former Rotary emblem, modified by taping an "X" across its face.

III

POLICY ON DISCRIMINATION

Rotary International does not discriminate on the grounds of race, religion or national origin and welcomes local clubs having memberships that are representatives of the diverse origins of their local population. The Rotary Club of Duarte has for many years been such a racially, religiously, and ethnically diverse club.

IV

**STATEMENT OF PLAINTIFFS' CONTENTIONS
IN PRETRIAL DISCOVERY**

In response to certain pre-trial discovery described more particularly below, plaintiffs have defined more particularly the specific contentions of fact which underlie their pleadings. For the convenience of the Court, such discovery and plaintiffs' answers thereto are compiled and attached hereto. Unlike prior portions of this stipulation, the parties have not agreed as to the truth of the content of the discovery, but do stipulate that it truly represents the precise definition of plaintiffs' factual contentions in response to which defendants' prepared their defense.

1. Exhibit M is the text of Defendants' first set of interrogatories to plaintiff (Nos. 1-14) together with Plaintiffs' Answers (and Supplemental answers) thereto (February-June 1981).

2. Exhibit N is the text of Defendants' second set of interrogatories to plaintiff (Nos. 15-42), together with plaintiffs' answers thereto (May 1982).

3. Exhibit O is the text of Defendants' Requests for Admission Nos. 6 and 7, and Plaintiffs' Answers thereto (August-November 1982).

4. Exhibit P is the text of Defendants' Third Set of Interrogatories to Plaintiffs (Nos. 43-61), together with Plaintiffs' Answers thereto (August-November 1982).

F-8

The foregoing Stipulation is agreed to this 29th day of November, 1982.

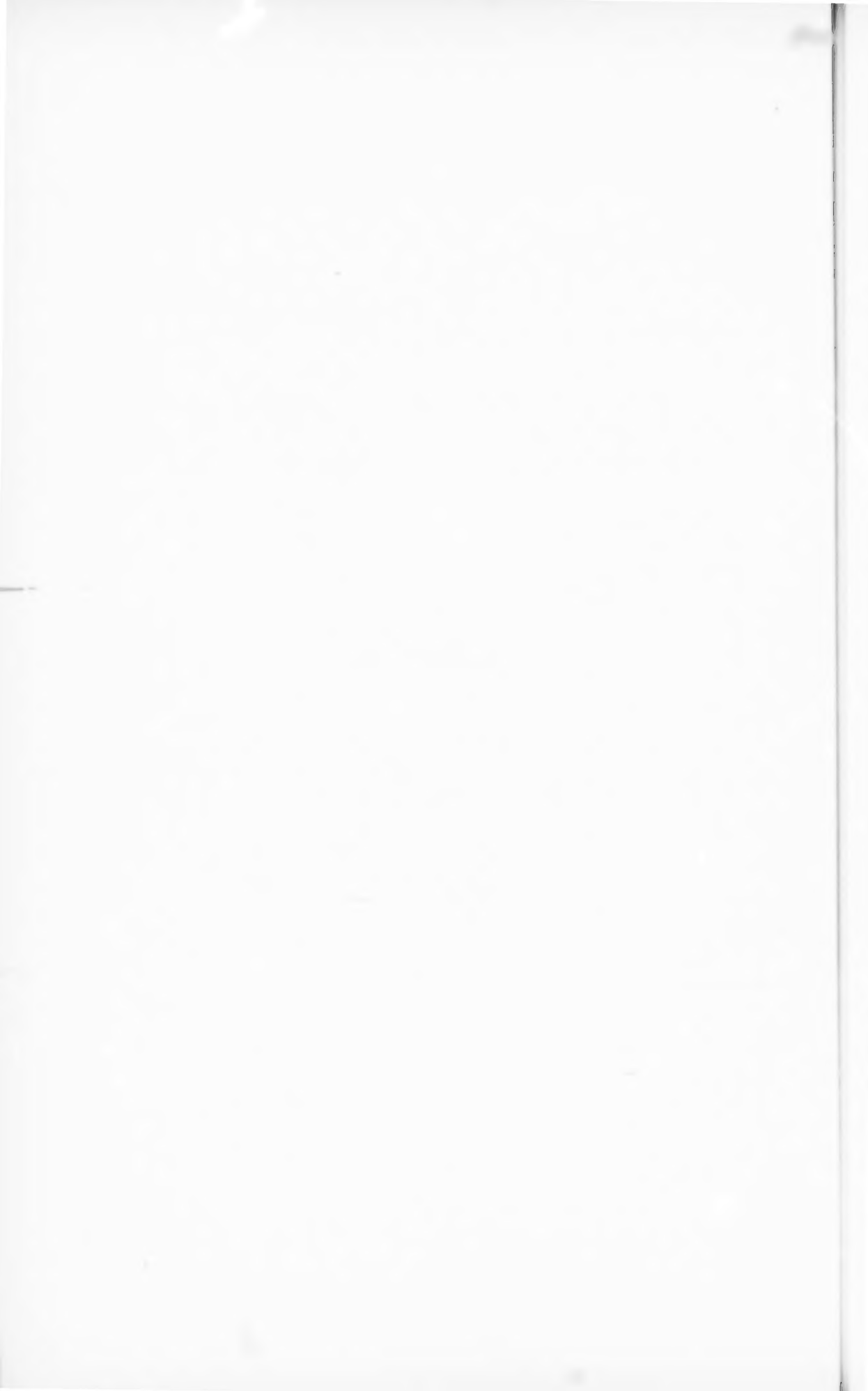
SANFORD K. SMITH
CAROL AGATE
FRED OKRAND

DARLING, HALL & RAE

By SANFORD K. SMITH
Sanford K. Smith
Attorneys for Plaintiffs

By WM. JOHN KENNEDY
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Attorneys for Defendants

APPENDIX G



SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ROTARY CLUB OF DUARTE, MARY
LOU ELLIOTT and ROSEMARY
FREITAG,

Plaintiffs,

vs.

BOARD OF DIRECTORS OF RO-
TARY INTERNATIONAL, ROTARY
DISTRICT 530, PAUL G. BRYAN,
OLIVER BATCHELLER AND
DOES I THROUGH XX,

Defendants.

No. C 244, 753

The deposition of HERBERT A. PIGMAN, before
Roberta Bachmann, C.S.R., a notary public, in and for the
County of Cook, State of Illinois, at 1600 Ridge Avenue,
Evanston, Illinois, on Monday, July 19, 1982, at 1:00 o'clock
P.M.

PRESENT:

MR. SANFORD K. SMITH,
(301 Oxford Drive,
Arcadia, California 91006),
Appeared on behalf of Plaintiffs;

DARLING, RAE & GUTE,
(400 Pacific Mutual Building,
523 West Sixth Street,
Los Angeles, California 90014),
BY MR. WM. JOHN KENNEDY,
Appeared on behalf of Defendants;

DAVIS & CICHORSKI,
(115 South LaSalle Street,
Suite 2680,
Chicago, Illinois 60603),
BY MR. MITCHEL P. DAVIS and
MR. ARTHUR F. CICHORSKI,
Appeared also for Defendants.

ALSO PRESENT:

MR. JERRY NEIGHBORS
MR. JONATHAN FISKE
MR. PHILLIP LINDSEY.

MR. KENNEDY: This is a deposition being taken in the case Rotary Club of Duarte, et.al., vs. Board of Directors of Rotary International, et.al. in the Los Angeles Superior Court, Civil Action No. C244,753.

This is being taken essentially by stipulation, but also pursuant to a notice of deposition which I will ask the reporter to attach to the transcript of the deposition.

HERBERT A. PIGMAN,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KENNEDY:

Q Mr. Pigman, will you state your name for the record, please?

A Herbert A. Pigman.

Q Mr. Pigman, I take it, you understand the general function of this deposition, but let me just outline, for the record, the formalities of the record, certain facts about a deposition.

The purpose of this deposition, specifically, is to make available for use in the trial of this action such matters as we have discussed. You are under oath, you should conduct yourself today in the same way you would conduct yourself if you were actually sitting in court with a judge. You should answer questions as carefully as you can.

After this oral deposition today, the contents of everybody's comments will be typed up verbatim and a written copy of the transcript will be resubmitted to you for you to review, make any corrections which you deem necessary to make your testimony more accurate and signed before a notary public. Although you are given an opportunity to make corrections, it is open to any counsel to comment on the facts that, on second thought, your testimony was modified, which is—can be all right, but it can raise inferences that you changed your testimony, so you should try to answer the questions as carefully as you can and if questions, by either me or by Mr. Smith, you don't understand them, please feel free to so state.

Mr. Smith, do you have anything you want to add before we go ahead?

MR. SMITH: Do you wish to make a stipulation as to waiving objections at this time, but not waiving them at the time of trial, if it is, indeed, submitted for evidence?

MR. KENNEDY: I would prefer that—no. I would rather that you do make your objections, particularly since we are intending to use Mr. Pigman's deposition in the trial, that will enable me to reframe the question.

MR. SMITH: Fair enough, that will be my understanding.

MR. KENNEDY: I would appreciate it if you would treat this with all the formalities.

Q Mr. Pigman, what is your present occupation?

A Well, my present occupation is that of General Secretary of Rotary International, which is the active managing officer of the worldwide association.

Q When did you first become associated in any regard with the Rotary International movement?

A On employment with Rotary International in May, 1956.

Q Prior to that time, were you a member of any local Rotary Club?

A No.

Q All right. Starting in May of 1956, will you chronologically describe the various positions which you have held in Rotary International by title, years in which you exercised them and some description of what you actually were doing?

A Well, the sequence was, on employment, an editorial assistant with the official magazine of the association, "The Rotarian." There were general editorial duties of writing and editing. Subsequently promoted to assistant editor.

In 1964, I was appointed as a special assistant to the General Secretary for Program and within a few months after that appointed to Manager-Program Division and this division is concerned with the development of ways and means of the association achieving its objective, research, leadership, development, education and publications.

In 1976 I was appointed as Executive Assistant to the President of Rotary International and on January 1, 1979, as a result of an election by the Board of Directors, I became

General Secretary. In that role, which is described in our bylaws as active managing officer, that incorporates all the duties that normally fall to the managing officer of an association such as this kind, staff coordination, carrying out those policies which are developed by the board and the convention and overseeing and coordinating the various functions to this central office and its several branch offices around the world.

Q Am I correct that the General Secretary is the most senior full-time employee of the Rotary International?

A That is correct, in terms of responsibility.

Q In addition to your duties as an employee of Rotary International, have you been a member of a Rotary Club during this—during this period of time?

A Yes. I have been an active member of the Rotary Club of Evanston, Illinois since 1964.

Q And have you—what positions have you held in that club?

A I have held a number of committee chairmanships, I have served on the Board of Directors and I served as President of the club in 1977-78.

Q To what extent have your duties with Rotary International and/or your participation in the Rotary Club of Evanston made you familiar with the workings and purposes and procedures of the Rotary movement?

A Well, my assignments here have required that I acquire a good grasp of the working principles and policies of the organization, because all these are described and interpreted in the various publications of the organization which number in the hundreds.

It has been my responsibility to write about them, to explain them, to incorporate them in various training manuals and procedures and to use this knowledge in responding to correspondence that reaches this office.

The duties have also enabled me to get some first-hand observation of how Rotary clubs operate and these travels and various meetings have taken me to more than 35 countries of the world.

MR. KENNEDY: Off the record.

(Discussion off the record.)

BY MR. KENNEDY:

Q Mr. Pigman, I will show you three books, each of which is entitled "Manual of Procedure," the first being dated August, 1975, the second being dated 1978 and the third being dated 1981. Will you, generally, please tell me what the Manual of Procedure is?

A Well, the Manual of Procedure is a publication of Rotary International, which is published every two or three years and it consists of two parts.

The first part is the—comprises the constitutional documents of Rotary, the constitution of the worldwide association, its bylaws, the standard Rotary Club constitution to which all members are required to conform and a set of recommended bylaws for the club.

The other part of the manual is a compilation of policies and statements by the board on constitutional affairs, advice on various matters and board-created policies which have become part of the custom and tradition procedures of the organization and they are codified in the regular and uniform manner and published in this form by this office.

Q Is the Manual of Procedure an authoritative statement of Rotary practices and principles?

A Yes. And it is distributed upon publication to each of the units of the association, which are the member Rotary clubs.

Q What is the significance of the dates of revision? Do they relate to any particular event?

A The Manual of Procedure is updated and printed as soon as possible following the meeting of the Triennial Council on Legislation, which is the legislative body of Rotary International. The changes in the constitutional documents are incorporated as are the most recent policies or any changes thereon caused by changes of the constitutional bylaws.

Q Now, specifically bearing in mind that this case involves certain transactions between members of the Rotary Club of Duarte and—the Rotary Club of Duarte on the one hand and the District Governor of the Rotary International Association District 530 and of Rotary International itself on the other hand, beginning approximately in the spring of 1977 and extending through early 1978, with that date framework, when did the changes enacted at the 1977 Legislative Council session formally take effect, what date?

A January 1, 1978.

Q Now, I show you the Manual of Procedure, dated August, 1975, and am I correct in saying that that is the—and bearing in mind that the next revision is the document "Manual of Procedure," dated 1978, my question is, would it have been—am I correct in saying that it would have been the document dated August, 1975 that would have been in the hands of most Rotarians during the pertinent period of time that we are talking about?

A That would have been in the possession of all the clubs in the association during that period, yes.

Q And with respect to the—in each of these Manuals of Procedure, as you have related, in the back there are copies of the constitution of Rotary International, the bylaws of Rotary International and certain standards and bylaws for the individual clubs, is my understanding correct that, in 1975, the Manual of Procedure, the blue covered one, the documents of the constitution, et.al. were in effect up through December 31, 1977?

A Yes.

Q And that the documents in back of—the corresponding documents in the back of the 1978 Manual of Procedure represented the up-to-date form of those documents, beginning January 1st, 1978?

A That's correct.

Q And the Manual of Procedure for 1981 also has a set of constitutions and bylaws, et cetera in the back; when did those documents take effect, in January of 1981?

A January 1, 1981.

MR. KENNEDY: I would like these three documents marked collectively Defendant's Exhibit A to this deposition.

Counsel, based upon the foundation laid by Mr. Pigman, I will offer these in evidence at trial. May I have a stipulation that they may be introduced at trial?

MR. SMITH: We have no objection, provided you will provide us copies.

MR. KENNEDY: Certainly.

(Whereupon Defendant's Exhibits A1 through A3 and Defendant's Exhibit B were marked as requested.)

BY MR. KENNEDY:

Q Mr. Pigman, I show you a collection of seven paperback books contained in a box, the box collectively entitled "Rotary Basic Library." Are these official publications of Rotary International?

A Yes.

Q Is the description of Rotary activities as contained therein accurate and authoritative?

A Yes.

Q Would you very briefly go through the individual seven books, read the title and just very briefly describe the contents so that the Court can get a rough idea of what might be found in each one of them?

A The Rotary Basic Library is a compilation of procedures of the organization of the individual Rotary Club and, more importantly, a description of typical ways in which clubs and individual Rotarians carry out their service objective.

The first volume, "Focus on Rotary," is an overview of what a Rotary Club is, what its objective of service is and what Rotary International is, its scope and purpose.

The second volume, entitled, "Club Service," deals with the rules and regulations of Rotary, which are considered necessary and which are agreed upon by Rotary Clubs worldwide, which helps them to keep together a group of community leaders and keep them informed, enhance the fellowship of the group, describes the various requirements

of Rotary membership in the club, such as those related to financial obligations, to attendance, describes how new members are invited to become members, et cetera. It is the mechanistic aspects of a Rotary Club as well as those aspects that related to program in the sense of a weekly program and fellowship in the sense of relationship which builds among the members of a Rotary Club.

The next volume, which is entitled "Vocational Service," deals with one of the principle areas of Rotary's purpose and that is the promotion of high ethical standards by Rotary Club members in the work place or in their professions and it gives examples of how Rotarians have translated this idealistic concern into practical applications in their businesses and professions.

The volume on "Community Service," describes typical activities which Rotary Clubs undertake for the welfare of others, principally those in their community. Here you will find photos and descriptive text on the tremendous variety of activities that make the community a better place in which to live.

The fifth volume concerns activities that Rotary Clubs and individual Rotarians undertake to encourage and help youth, such activities as citizenship development, opportunities to travel abroad, to broaden their knowledge of other countries, scholarships, help for crippled children among others.

The sixth volume describes typical activities of clubs undertaken to build a better understanding and good will, friendly ties among peoples of different nations, all the principal programs that the Rotary Clubs voluntarily participate in are described in this volume.

The final volume describes the Rotary Foundation. This is a trust incorporated under the laws of Illinois, not incorpo-

rated, it is a trust in which Rotarians worldwide are invited to contribute voluntarily, to fund activities as a foundation which are all aimed at promoting friendly relations between people of different countries. The objective is peace.

The foundation is an organization controlled by 13 trustees. Its activities are philanthropic, charitable, eleemosynary and educational.

This entire Rotary Library is intended to inspire, motivate Rotary members to carry out the reasons for its existence, service to others.

Q The basic library, each of the elements of which you have described, is an official Rotary publication, is it not?

A Yes.

Q And it is current and up-to-date?

A Yes. It was published a few months ago in its English language edition.

Q Is it an accurate and authoritative statement and description of Rotary activities and organizations?

A Yes, it is.

MR. KENNEDY: Counsel, I would, at this point in the trial, offer the Basic Library and its contents in evidence.

MR. SMITH: We have no objection.

BY MR. KENNEDY:

Q Mr. Pigman, referring to the document in the library entitled, "Focus on Rotary," and particularly the charting immediately after page 33, 33 and 34, there seems to be something missing, 36 — they are blue pages, anyway, between pages 33 and 36. On the assumption that the Court is looking at these pages, will you describe, if you will, the

organizational pattern of Rotary International and its associated clubs and the Foundation?

A Well, Rotary International is an association of its 19,800 clubs, approximately, worldwide in 157 countries in geographical regions.

A club is a member of the association, voluntarily joining it, co-equal in every respect to every other club in the association.

Each club that joins the association agrees to abide by the rules as contained in the standard Rotary Club constitution, which it adopts upon admission to the organization.

Now, the association functions essentially with an interplay of the six components shown in the chart. There is an annual meeting of the association, to which—

Q Pardon me?

A Yes.

Q Let me just interrupt to make one point. The association, which is generally described as Rotary International, is an association of clubs as distinguished from individual members of those clubs, who are not members of the Rotary International Association directly, is that correct?

A That is correct.

Q All right. Will you please continue then?

A Well, the association, as directed in constitutional documents, holds an annual meeting at some place in the world, to which any Rotarian of any club is free to attend. The purpose is to conduct the business of the association and to promote international fellowship and acquaintanceship among Rotarians and to treat subjects of concern to Rotary's objectives in the vocational community and inter-

national service. It elects the officers of the association and I could provide more in detail on that, if you wish, later.

There is a body known as the Council on Legislation, which meets each three years. It is Rotary's parliament. It comprises representatives of the clubs in Rotary's 403 districts.

Q Just pardon me.

A Yes.

Q For the record, the last meeting, when was the last meeting of the Legislative Council?

A The last meeting was in June, 1980, the in the City of Chicago.

Q And prior to that, would it be more or less June of 1977?

A Yes, in '77 and in 1974. Prior to that, the Council met each two years.

Q Okay. Please continue.

A Well, the Council on Legislation is the mechanism by which any Rotary Club worldwide may propose changes to the constitutional documents or propose resolutions that would affect the policies and procedures of the organization.

These are all transmitted to the Council, where they are debated and voted upon. Those that are passed by the Council and are subsequently upheld by referendum of the members, of which they have an opportunity to vote yes or no on the action of Council, then become, on January 1, the law of the association.

All delegates to this Council on Legislation are elected through a democratic process ballot by mail or at a district conference on a district level.

Q Will you explain, I think, at this point, the district level is sort of an intermediate concept between Rotary International at the top and individual clubs at the bottom. In this particular case, District 530 has been named as a separate defendant from Rotary International, so, therefore, I would appreciate it if you would explain to the Court how a district fits into this pattern of organization?

A A district is an arbitrary geographical territory, decided upon by the Board of Directors, comprising on the average of 50 clubs. It is headed by a volunteer Rotarian, who, for one year, serves as District Governor. This is a man brought forward by the clubs of that district, nominated by him and elected by the district at the International convention.

He assumes duty on July 1 for one year and his job is to be a friendly counselor to the clubs in his district, to provide them inspiration, to provide them with information, to make an official visit to each club and make an address to the club each year, to conduct a leadership training meeting related to Rotary on the district and to hold a meeting on the district level that is called a District Conference and is analogous on the district level to our worldwide convention.

Q All right. Would you then proceed with your general discussion, which I interrupted, of the organization?

A The Board of Directors comprises 17 persons, including the President and President-elect. Each of the directors is nominated by a zone or a region on an agreed upon rotating basis and serves on the board for two years.

This is the body that is the administrative body of Rotary International, is chaired by the President, who serves for one year. It supervises the work of the General Secretary and it supervises the work of the District Governors, who number 403 today around the world.

It is a worldwide representative body that, in its policy making and other decisions, tries to represent the best interests of all of the conditions which the association encounters worldwide.

They meet four times a year.

The General Secretary is a title given to the managing officer, a paid employee of the association.

Q A post which you are presently occupying?

A That is correct.

Q All right.

A And the General Secretary is assisted by a staff who provide information to its volunteer leaders on the district level and the club level, plan the meetings, produce the publications, maintain the records, collect and disburses the funds.

We do not—it is not the function of the General Secretary or his staff to create policy for the organization, but merely to inform clubs and leaders of what the policies are and to amplify, where necessary.

The District Governors I have described. They supervise and assist the clubs in their district. Their job is to help the club President and its other leaders be successful in carrying out the club objectives and, finally, the club itself, approaching 20,000 in number, and the membership of those clubs today exceeds 900,000 members in 157 countries.

Q Have there been any studies to determine more or less what an average size of an individual Rotary Club is?

A The average size is about 50, but they range in size from fewer than 20 to more than 900.

Q Now, I would like to go to the subject of membership, Mr. Pigman, and as we have discussed earlier, there is a distinction between membership in Rotary International, in which the members are the club, and the membership on the part of the individual persons, who are members of the individual clubs only, but not of Rotary International on a broader level, is that correct?

A That's correct.

Q Incidentally, am I correct that a corporation cannot be an individual member of a Rotary Club, only a human being?

A That's correct. Membership in a club is a personal membership and does not represent a company or other corporate entity membership.

Q Just for the guidance of the Court in any further studies it wishes to make, referring to the 1981 Manual of Procedure, in the table of contents, would you read off those sections which describe membership at the local level, at the individual level in the clubs?

A Referring to the contents page of the Manual of Procedure, you will note a chapter entitled "Membership in Rotary Clubs," pages 134 through 146 inclusive.

In relation to the individuals membership in a club, with respect to membership of a club in Rotary International, this would be covered in more than one chapter, namely, "Extension of Rotary," pages 92 through 101. "Territorial Limits," 205 through 207.

Now, I have alluded to part one. Under part two, Membership Provisions, Qualifications and so forth, are included in the three documents which together comprise the constitutional documents of Rotary, the constitution, the bylaws and the constitution of the club. The description of member-

ship and membership qualifications are found in Section 3 of Article 4 of the constitution of Rotary International.

Q These are of individual members, now, in individual clubs?

A That's correct, right.

Q Referring back to the question I asked you a minute ago, which you answered that a corporation cannot be a member of an individual club, does that reflect a particular policy decision on the part of Rotary International?

A Yes, it does.

Q Could you tell us what that policy decision is?

A Well, my statement was based upon a formal resolution adopted by the convention of Rotary International in 1929, the meeting of 1929, which is stated on page 134, Manual of Procedure edition. I quote:

"Membership in a Rotary Club is considered to be the personal membership of the individual and not of the partnership or corporation which the individual member represents."

Q Are you familiar with the policy considerations behind that decision?

A I was not present in Dallas in 1929, so I can only conjecture on the basis of my understanding of history what might have led to that.

Q Well, based upon your experience in Rotary and as the General Secretary, do you have an understanding of what it is implicit in that or, at least, how it's been understood, what the policy has been understood to reflect?

A Well, the basis of a person's membership in Rotary is the considerations of a person as an individual, as a community leader, as occupying a position of some importance in his business or profession and, in no way, has it been tied to a particular corporation or other entity. When a person is invited to become a member or proposed by a current member, the personal qualifications are the criteria against which his membership is assessed, not those of any business entity or institution with which he may be associated.

Q Now, delving a little more deeply in the subject of the addition of members, individual members to an individual club, at that level, now, are the procedures for the addition of individual members set forth in any of the bylaw documents, standard club constitution, et cetera, that are—let's refer to the 1981 edition of the Manual of Procedure.

A The qualifications of a member are included, as I stated, in Article 4, Section 3 of the constitution of Rotary International. The method of electing a member is in the province of the local Rotary Club, that is the method, and the Board of Directors of Rotary International has suggested a procedure to clubs for electing members. This appears in what is called the Bylaws of the Rotary Club, beginning on page 315 of the Manual of Procedure.

Q 1981 edition?

A That's correct. And, specifically, beginning with Article 11, "Method of Electing Members," and the various sections there describe the recommended procedures for the election of a member.

My personal observation is that while clubs are not required to adopt this particular method, that almost all clubs would adhere very closely to these basic steps and this basic sequence.

Q Again, dealing with the qualifications and selection of individual members in the local clubs, there is a classification system, which I presume is described in the 1981 Manual of Procedure, at pages 30 to 33, is that correct?

A Would you state your question again, please?

Q There is a classification system for the guidance in the selection of individual members in the local clubs, which, I take it, is described generally under the title "Classifications" down on pages 30 to 33 of the—

A That's correct.

Q I would ask you if you would, in your own words, describe that classification system for individual members and the function which it serves in carrying out the objectives of the Rotary?

A Well, the classification system of membership in Rotary was one of the earliest principles of membership in Rotary. The founder of Rotary and some of his friends, who met in Chicago and devised Rotary, each represented a different vocation or occupation and they desired this for several reasons. One was to have a fellowship based on diverse—men of diverse interests. They wanted to get a good cross section of the community, of its business and professional leadership and they felt that this form of membership would serve to ensure that the club comprised members with broad based interests, that would not become dominated by any occupational sector or professional sector and that they would eventually—it would enhance what developed into the primary purpose of service; that a group of men, representing all these diverse occupations would be better attuned to the needs of the community and better informed on how a group of altruistic men might address themselves to any problems.

The basic rule in Rotary is, with certain exceptions, based on variation of membership, to have one man from each classification.

Q How seriously does Rotary take these classifications and other screening principles in the screening of its individual members at the local club level?

A Well, let me answer that first on the basis of the degree of compliance which we require when a member is admitted to the association.

Rotary Club is formed by a group of men in a community or part of a community where Rotary does not presently exist, usually at the instigation of the District Governor or perhaps members of another Rotary Club that would see that that community would benefit from having a club.

The procedures of Rotary International do permit a new Rotary Club to be formed if it meets certain criteria.

Q Pardon me?

A Yes.

MR. KENNEDY: I will ask that this document, entitled, "Extension Manual No. 8108," be marked Defendant's Exhibit C to the deposition.

(Document marked as requested.)

BY MR. KENNEDY:

Q I hand it to you, Mr. Pigman, and does this manual describe the selection procedures which you are in the process of describing to the Court?

A Yes, it is. It is a manual that is used worldwide by all District Governors or their special representatives for the purpose of forming a Rotary Club and to move it through its various stages leading to its admission to Rotary International.

Now, one of the principle—you asked about classification, one of the principles is that Rotary Club must begin with no fewer than 20 members. These people must represent different classifications.

Furthermore, there must be available within the community 20 additional classifications, which would represent potential for membership growth.

The names of those interested in being Rotarians and the classification which they would represent in the club are scrutinized. At various stages a survey is done of the community to determine the separate and distinct classifications that do exist.

When that is developed, they seek to determine if there are men interested in being part of a Rotary Club, who would represent those classifications.

The district, the development of this list of names and the classification is done by an agent of the District Governor, known as a special representative of the District Governor, scrutinizes this list and makes certain statements which indicate that he has.

This is sent into the Secretary at the central office here for further review by staff and, if there are any apparent discrepancies in duplication of classification or lack of clarity, these are regularized before the club is admitted.

The club undergoes a provisional status, where it meets for a period of weeks or months, demonstrates that it is meeting regularly each week, following the rules and when all is in order, the recommendation for admission is acted upon by the board and the club is admitted.

Q What is the Principle of Extension as it appears in some of these documents, in the admission of local Rotary Club to Rotary International?

A Well, "extension," is a term used within Rotary to describe the process by which a new club is developed and admitted to the association.

Now, clubs result from voluntary efforts completely, in which Rotarians in an existing club and/or the District Governor, working in concert, try to bring about a new club in a community that does not have one.

We do not have, incidentally, paid employees of Rotary International who go out and attempt to organize clubs.

When the group of men is gathered and begins to meet under the conditions I have described and they agree to follow the constitution, to pay the dues and agree to the stated agreements, which you will find is part of this exhibit, then they are admitted to Rotary International and that is the way all the clubs of Rotary International have been brought into the association worldwide.

Q Does the Principle of Extension bear a relationship to the policy of service to the local community, Mr. Pigman, and, if so, could you explain that a little more fully?

A Well, Rotary International is desirous of seeing Rotary in every community where there is reasonable certainty that a Rotary Club can operate and carry out its function. It proceeds from the premise that Rotary is a force for good in society and that it brings many benefits to a community.

The interest of Rotary International is the interest of extending the benefits of Rotary to the community and widening the number of units of the association, which is one of the principal vehicles in carrying out its objective of building international good will and understanding, because each new unit represents another possibility for people to be in contact across international borders.

Q Does Rotary International require a certain attendance policy on the part of the members of each local club?

A Yes. When a person agrees to become a member of the Rotary Club, he agrees to a number of conditions and one of the primary ones is that he must participate and get involved in the club.

The association worldwide has agreed that one of the best ways to get involved is to be there when the club meets and when it undertakes other service activities, so, insofar as the club's mandatory weekly meeting is concerned, a person may attend no less than 60 percent of the meetings in any given six-month period, otherwise he automatically forfeits his membership.

If a member, for one reason or another, misses four consecutive meetings of the Rotary Club, his membership is automatically forfeited.

This is a policy that is, in my observation, rather strictly adhered to by the clubs around the world. It, in my view, it is one of the key components in Rotary's vitality.

In Rotary Clubs that meet around the world each week, some 80 percent of the members are in attendance. Those that cannot attend are urged and thousands of them do each week visit a neighboring club and visit a club en route of their international or domestic travel, where, as a member of good standing of their own clubs, they are welcome to attend regular weekly meetings of any other club.

Q Does the requirement of a minimum amount of attendance and the privilege of discharging that attendance requirement by attending meetings at other clubs more conveniently held during a particular week result in a substantial amount of, I might call it, interclub participation by individual members?

A Yes. It is quite common for any Rotary Club, held reasonably near another Rotary Club, to have at its weekly

meeting one or more guests, excuse me, not guests, one or more Rotarians of other clubs attending that club for purposes of acquaintance and the interclub fellowship and to get the credit for attendance toward their mandatory attendance requirements and especially for Rotary Clubs which are on the travel routes of the world, the numbers of visitors could be not one or two, but in the tens and twenties each week.

Q Does a Rotary Club, local Rotary Club, have any obligation to accept as guests visiting members of other clubs in the makeup category that you have just described?

A Well, the procedures of the organization enable any members of any Rotary Club to attend, upon payment of his luncheon fee or meal fee, if there is a meal involved, and if the club wishes, the display of his membership card, identifying him as a member of the Rotary Club, to be a part of that meeting and participate in all of its functions.

Q Can you describe to us, Mr. Pigman, the essentials of what is done at a usual weekly meeting of the local Rotary Club?

A A Rotary Club meets each week, that is mandatory, and the usual pattern is as follows and takes place over a period of 60 to 90 minutes.

The members arrive and greet each other. Attendance is taken, usually in a written form or in some other form that verifies that they were there. In most countries they have a meal together and that could be a breakfast or a luncheon meal or an evening meal, a practice which developed because they found a meal time a convenient time to get together for their purposes.

The normal pattern then calls for announcements by the club leadership concerning service activities or community

reports or personal news about members of the clubs, people who may be ill, greetings from other clubs, visiting Rotarians are welcomed, persons who may have been invited to the club as a guest of a member are introduced and welcomed.

Sometimes there is a period in which there is a little information session about some of Rotary's objectives. There is almost always a program of 25 to 30 minutes' (sic) duration, usually consisting of a speaker or presentation on some aspects of Rotary's concerns, such as community service or international affairs and, then, there is adjournment, at which time most members return immediately to their place of business or profession or, if it is an evening meeting, they may go home.

Occasionally there will be a committee meeting that follows, because, again, that is a convenient time for all the members who are there.

To witness a Rotary Club meeting is, however, not to get a good view of what Rotary's purpose is or what it does, because Rotary is a service club. Its objective is individual and collective actions to help other people and this work, while it may be planned, in part, in a weekly meeting, usually takes place outside of and in addition to the weekly meeting.

Q Is a Rotary meeting at a local club open to the public?

A No.

Q You must either be a member of that Rotary Club or of another Rotary Club or be a bonified guest of a member of that club to participate?

A That's correct.

Q Now, I would like to move to a more specific examination of the concepts of service which, after all, is more or

less a central objective of why all these meetings and organizational patterns take place.

You are aware, Mr. Pigman, that this lawsuit places in issue the question of whether or not Rotary International is a business establishment, as that term is used by the California Unruh Act, and there are certainly some business establishments which are in the business of rendering service. When you mean service or when Rotary means service, is there a distinction between service as it is accomplished through Rotary on the one hand and service as it is rendered by a business establishment on the other side of the hand and, if so, would you describe that difference?

A Well, very definitely, there is a distinction. The word "service" used in context, used by Rotary and other service organizations, is not a term that is widely understood and it is, I think, subject to some misinterpretation.

The definition of "service" in this context, which comes closest, in my opinion, to what Rotary means by "service," and I quote here from my own Webster's dictionary, is:

"A contribution to the welfare of others."

Now, Rotary describes itself, in its formal definition, as a group of business and professional men united in worldwide fellowship, whose purpose is to provide humanitarian service in the context of "service" as I have just described, to encourage high ethical standards in all vocations and to help build good will and peace.

Now, the concept of "service" is given tangible expression in what clubs actually are doing. The Rotary Basic Library, which has been introduced as an exhibit, gives a worldwide view of the typical ways that Rotary Clubs interpret their objectives and translate them into concrete actions which

help other people and I have here a summary of specific service activities which relate to the area in question, which, if—

Q Let me—

A —you would like to see, they are in summary form.

MR. KENNEDY: Let me have these collectively marked as Exhibit D, the next in order, anyway, to this deposition and, then, I would like to give Mr. Smith an opportunity to inspect them and then we will go on with a description of it.

(Whereupon Defendants' Exhibits D and E were marked as requested.)

(Whereupon a recess was taken.)

MR. KENNEDY: Are we ready to resume?

Q Mr. Pigman, I will show you a stack of Xeroxed copies of various business records of Rotary and will you tell the Court what, in general, without getting into the specific content, what, in general, is the nature of these business records from which these copies were taken?

A These records are in two parts and they concern about six or seven Rotary Clubs, including the former Rotary Club of Duarte in the Duarte area. They comprise a summary developed by the leadership of the club itself, of its activities and its plans for the current year in all major areas of Rotary Club service.

It indicates their current membership status and how many members they expect to gain or lose in what categories in a year.

This summary of club plans and objectives is developed for and provided to the District Governor at the time of his visit and the District Governor is informed by this, and on the basis of this, is able to help the club with suggestions and

recommendations, provide them certain publications, which would help them achieve their own objectives.

The second part of each of these is titled the "Memo of Official Visit of the District Governor."

This is a report generated by the District Governor following his visit and it is a record of what he discovered on his visit and is a memorandum to himself concerning what specific ways he might follow-up and help this club.

This is a summary of club plans and objectives, is the sole document of its kind produced by Rotary Clubs each year and it is merely a mechanism by which the leadership summarizes and codifies what it hopes to achieve during the year.

Q Are these records prepared and forwarded to Rotary International in the ordinary course of business?

A Yes. The Governor immediately forwards a copy of the club summary to the office serving his area along with a copy of his memo of official visit, because our job is to help the District Governor in his task and help the club president achieve his goals.

This report is analyzed, both reports are analyzed and appropriate action is taken.

For example, seeing that the club is interested in youth exchange, we might, on our initiative or on the District Governor's own suggestion, send this club a pamphlet dealing with how to exchange youth from its community with a community abroad.

It is the chief mechanism by which we help the volunteer leadership of the association promote the aims of the association.

Q Now, specifically, you have—you searched, is it correct, you searched the records of Rotary International to

determine the most recent document of this kind from the plaintiff Duarte Club and that they are copies of those original documents taken from Rotary's files, a part of the packet of papers collectively marked Exhibit E?

A That's correct.

Q And for what years do you have reports from the Duarte Club?

A For the Rotary years 1970-71, 71-72 and 72-73, along with our records of their reported attendance and membership.

Q Referring to those records of the Duarte Club only, can you, for purposes of getting the Court a general description, based on Duarte's own records, of what kind of service activities they reported to Rotary International as undertaking during that period of time?

A Yes. I am referring to the summary of club plans and objectives, which was prepared by the then President of the Rotary Club of Duarte for the Rotary year 1972-73. They are reporting a club size, at that time, of 19 members, which would rank as of the smaller Rotary Clubs in our association.

They list, under "Vocational Service," that they plan to provide assistance and occupational information for students at Duarte High School.

Under "Community Service," they plan to provide volunteer workers for community recreation programs.

Under the category of "Community Safety," they report a student safety program assembly of some sort in December. They have student guests from the high school in Duarte and Mount Olive High School regularly to acquaint them with the aims of Rotary.

And, then, they plan specifically to participate in what they call a "career night," in which they plan to provide three professional people to assist and take part in the career night program at Duarte High School in the next year.

1971-72, the summary of club plans and objectives list, and these are typical Rotarian Club projects, under "Crippled Children":

"Money support plus group services will be rendered to this community service."

Unspecified as to detail.

They plan to establish a committee to examine community safety programs. Evidently continuing student guests. They are going to attempt to start an interact club in the community.

An interact club is a service club for young men and women, usually of secondary school age, which has the objectives of service to the community and international good will and understanding.

Under "International Service," the club reported they have established a committee with several persons who have traveled abroad to work on world community service.

World community service is a program in which a Rotary Club in one community, often an affluent community or in a developed country, attempts to help a Rotary Club in a developing country with a project or community need that may be beyond the resources of that community. Typically, it might involve a shipment of school books or medicines which have been gathered or a pump for a village well or whatever. It is one of the ways we try to promote international understanding through the tangible projects.

They also indicate they will support the Rotary Foundation and its programs.

And, in their final year, for which we have a record here—

Q What year is that?

A This would be the year 1970-71.

Q These years go from July through the following June, do they?

A That's correct. Their community service activity report, they are planning and organizing an overnight outing for underprivileged children at a mountain camp site. They plan to provide a scholarship for deserving Duarte High School seniors to one of the nearby colleges. They are going to provide an award for recognizing scholastic achievement for a junior high school student and they again say they are going to contribute money to the Rotary Foundation.

Q Now, in addition to the documents in Defendant's Exhibit E, relating to the Duarte Club, for the three years which you have just summarized, you have assembled documents of the same type for the year 1977-78 of certain other Rotary Clubs geographically adjacent or nearby Duarte as further examples of Rotary activity in District 530, have you not?

A Yes.

Q I show you Defendant's Exhibit D and ask you if the contents of that relates to these documents coming from adjacent Rotary Clubs?

A Yes. Exhibit D describes—

Q D?

A Exhibit D.

Q D as in David.

A D as in David describes the service activities of eight clubs in the vicinity of Duarte as reported by the clubs in the year 1977-78.

Q Was it prepared from information supplied on the correspondingly described documents in Exhibit E that you have just—

A Yes. This summary is based on the reported activities listed in the club plans and objectives.

Q Was it prepared under the direction of your office?

A Yes.

Q To the best of your knowledge, does it truly reflect, as a summary, the activities of these various clubs during the Rotary year 1977-78?

A Yes. This list of activities is quite representative of what Rotary Clubs undertake as community and other services around the world.

MR. KENNEDY: Counsel, at this point, I will, based upon that foundation, offer Defendant's Exhibit D in evidence.

MR. SMITH: We have no objection. However, we would like to have at least one other club added to that.

MR. KENNEDY: All right.

MR. SMITH: I don't know whether to do this on voir dire or wait until cross examination.

MR. KENNEDY: I would prefer that. We have no objection to your obtaining that further discovery, but for purposes of this part of the case, if you would stipulate that Exhibit D may be introduced into evidence and, then, we will, of course, give you an opportunity to pursue the other club. Is that agreeable?

MR. SMITH: We will agree. We have no objection to it being introduced.

BY MR. KENNEDY:

Q Now, getting back to the concept of a service club and comparing it with a business engaged in the providing of services, are the members of the Rotary Club, the recipients of the services which you have described?

A No. They are not the recipients of the service. They are the givers of the service.

Q Is there any discrimination by sex among the recipients of services given by Rotary Clubs?

A Not to my knowledge.

Q Bearing in mind the type of activities that you have orally recited with respect to Duarte and which Exhibit D summarizes, with respect to some of the adjacent clubs, do you have anything to add to how the Principle of Extension coordinates, is related to the carrying out of such services? "Extension" being the principle of individual local clubs, citing—

A As I said earlier, Rotary is desirous of expanding the number of member clubs in the association, because it makes the quite valid assumption that there is no single community, no matter how affluent or in any nation, that would not benefit from having within it a group of community leaders, such as are represented in a typical Rotary Club. Any club that is formed immediately begins to assess how it might help its community and the series of activities that are described in this summary are quite typical of the needs that clubs identify and take action on.

The stated policy of Rotary International in community service is to survey its community and identify the needs,

see if there is any current agency or group that is helping to meet the need. If none is available, to undertake to ameliorate the situation itself and once they get the ball rolling, they attempt to get out from under it as a club and leave behind some group or agency or efforts that continue to meet the needs, leaving the club free to go on to identifying another need and so forth.

This is the way clubs work worldwide.

Now, a club that comes together, is newly created, comes together and is admitted to Rotary on the basis that they agree that these are the objectives of Rotary and the only reason for their existence and, in the interchange of viewpoints that occur at a club meeting, and the presentations they hear, they begin to identify and hear about community needs that they might not have heard of through any other mechanism.

So Rotary fulfills a rather unique role in its community, if it is the only service club.

Now, there are other service clubs that have very similar function, but they are all designed to be a channel for individual or collective action by its members to meet community needs or the needs of individuals in the community.

Q Is the principle of classification, getting one member from diversion businesses, a principle that was selected because it reinforced the ability of Rotary to act as a service club or for other purposes?

A Well, that classification principle clearly is the reason today for having a good cross section of the membership. That was not the original purpose of the original club and there were, in those very early days of Rotary, as stated in our own official publications, a motivation of help to each

member, but as the organization evolved, very early in its life, it discovered that any component of help to each other or any component of business reciprocity was not an element on which you could build a service organization.

So the elements of service pushed aside all of those considerations and the record of Rotary documents this by official resolution, board policy and otherwise.

It's rather swift and clear move toward the concept that service means help to others and the principal motto of this organization, of course, is "Service Above Self."

Q With respect to the changeover of that policy of mutual help to help outside the Rotary Club itself, I refer you to Exhibit A, particularly the 1971 Manual of Procedure, page 138, and particularly the section titled "Commercializing Rotary," and ask you if that is one expression of the changeover or at least the existence of a present policy different from the original policy of helping each other?

A Yes.

Q Would you read that into the record?

A You wish me to read this entire statement on commercializing Rotary?

Q I wish you would.

A "The policy of Rotary with regard to business relations between Rotarians is that a Rotarian should not expect, and far less should he ask for, more consideration or advantages from a fellow Rotarian than the latter would give to any other businessman with whom he is in business relations."

"Further, it is contrary to a Rotarian's obligation toward his competitors and it is contrary to the principles of vocational service for a Rotarian to grant to a fellow Rotar-

ian (because he is a Rotarian) privileges that he would not normally accord also to others with whom he has business relations. True friends demand nothing of one another and any abuse of the confidence of friendship for profit is foreign to the spirit of Rotary."

"If new or increased business comes naturally to a Rotarian as a result of friendships which he has made in Rotary, that is a normal development which takes place outside Rotary as well as inside, and is not in any way an infringement of the ethics of Rotary membership."

Q There is a reference there to "board 33-34," would you explain that?

A Well, the board adopted this policy statement almost 50 years ago, 1933-34, upon expressions reaching it from, in this case, a European advisory committee, that this principle, clearly stated in this statement, was not or may not have been clearly understood by some individual members in Rotary and the board felt, by this means, it would make it absolutely clear that a membership in Rotary is not for your personal gain by any means.

Q Now, a substantially identical statement appears in the 1978 Manual of Procedure, page 166, am I correct?

A Yes. As far as I know, this is identical to the one that I just read.

Q Now, in fact, the board of Rotary has recently strengthened the 1933-34 statement, has it not?

A Yes, it has.

Q I refer you to the 1980 Manual of Procedure, page 154, and ask you if that reflects the most recent enunciation of that policy by the board?

A Yes. The item on page 154, entitled, "Commercializing Rotary," is the most recent statement of the board policy on the subject.

Q And the contents of that will speak for themselves, but just briefly, would you state in what particulars the statement has been strengthened?

A Well, it has been reduced in the language and, it's always a help, it specifically excised the paragraph which was the final sentence of the policy statement that I introduced into the record earlier.

In my opinion, because they felt it would further strengthen this statement and make this clear policy against personal gain subject to less misinterpretation.

Q Now, to turn to some, somewhat technical matters, Rotary International has a corporate form, does it not?

A That's correct. It is incorporated in Illinois as a not-for-profit corporation.

Q And individual Rotary Clubs form their association by taking membership in that not-for-profit corporation, is that correct?

A Yes. Well—

Q I am sorry, individual clubs.

A Please state your question again.

Q Yes. Let me state that again.

A Yes.

Q What is the relationship of the individual clubs in the association to the corporation entitled Rotary International?

A Well, the relationship of a club to the association is as a member of the association, entitled to all the rights and

privileges that are pertained to membership in the association and on the provision that it carries out all the obligations of membership to which it pledges itself upon admission.

The specific obligations are such things as payment of its financial obligations, adherence to the rules decided upon by the legislative mechanisms of Rotary, continuation of its functioning as a service club, meeting regularly and all the other specific agreements which are part of the admission documents in the Extension Manual.

Q Now, the second course of action in the amended Complaint is premised upon the theory that Rotary International is subject to certain provisions of the California State Constitution, and it is at least Rotary's contention, Rotary, the defendant Rotary, it is Rotary's contention that, at least for such a claim to be valid, there must be certain benefits from the State of California to Rotary International to, in effect, make Rotary International a state agency.

In the context of that, my summary of contentions, I would ask you the following: Rotary International, the non-profit corporation, has it formally qualified to do business in the State of California?

A No. Rotary International, as a corporation, is not qualified to do business in the State of California in that sense.

Q Has the franchise tax board of the State of California granted to Rotary International, the corporation, any tax exemption privileges?

A None whatsoever, to my knowledge.

Q There is a related organization, which is not exactly the same as Rotary International, the corporation that we have just been discussing, called the Rotary Foundation,

which I take it is described, at least generally, in each of these three Manuals of Procedure, under a chapter entitled, "The Rotary Foundation," correct?

A Yes.

Q What, organizationally and legally, is the distinction between the non-profit Illinois corporation, Rotary International, on the one hand, and this entity called the Rotary Foundation on the other hand?

A Rotary International is a not-for-profit corporation under the laws of the State of Illinois. Rotary Foundation is a trust operating under the Illinois state laws. The Foundation legally is described in several sections of the constitutional documents, the most descriptive of which is in Article 19 of the bylaws of Rotary International, beginning on page 297 of the Manual of Procedure.

Q This is the 1980 Manual of Procedure you are referring to?

A That's correct. Basically that article provides that the title to all property of the Foundation is vested in 13 trustees, who invest, manage and administer it and have the power to spend from the corpus or principal of the funds, in concert with the board and with the Council on Legislation or convention monies (sic) in pursuit of the purposes of Rotary International or the objectives of Rotary or any philanthropic, charitable, educational or eleemosynary purpose, object, movement or institution sponsored or approved by Rotary International.

In summary, it is the single foundation or mechanism by which Rotarians worldwide can fund international service activities which they agree have merit.

It is a foundation that has the stated operational objective of promoting friendly relations among people of different

nations and for principally the last—during the post-World War II era, it has carried out this purpose through the exchange of young people for educational purposes.

The Foundation is supported by the voluntary contributions of individual Rotarians and others around the world.

Q Now, am I correct that the Rotary Foundation qualifies as a charity under Federal tax laws?

A It qualifies as a tax-exempt institution under the Internal Revenue Code of the United States of America and for purposes of the State taxes and other things, it is exempt. Contributions to it are exempt.

This privilege is enjoyed by contributors of, I think, two other nations.

Q Am I correct that Rotary International, the non-profit corporation, does not enjoy such a charity status?

A No. It does not.

Q Now, Rotary International receives dues from the individual and local clubs, is that correct?

A That's correct.

Q And how are those dues measured?

A The dues are uniform worldwide and a club is obligated to pay Rotary International annually the sum of \$17, U.S. or equivalent, for each member on its rolls as of a certain date.

Now, in practice, the per capita dues are paid on a semi-annual basis, but the principal is a specific amount of money for each member of the club as of a given date, specifically, July 1 and January 1.

Q Now, in addition, individual Rotarians pay dues to their local club, is that correct?

A Yes. At a level prescribed by the club bylaws.

Q Do individual Rotarians pay any dues directly to Rotary International?

A No.

Q Is it a condition of being a Rotarian that one make any contributions to the Rotary Foundation?

A No.

Q Now, I believe I correctly understood your testimony to be that, some time ago, that the Legislative Council, as described in these various documents, is the sole body for enacting an amendment to the constitution of Rotary, is that correct?

A Yes.

Q Subject, I take it, to maybe—do you want to describe that process a little more particularly?

A I want to correct my answer. Council on Legislation has this authority, as does the Convention of Rotary International.

Q This lawsuit contests, as you know, the validity of the provision in the Constitution of Rotary International and the corresponding provision in the required constitution of each local club, that all of its members be, all individual Rotarians be male.

Has that principle been re-examined in recent years by the Council on Legislation and, if so, would you describe the occasions and what transpired?

A Yes, it has. As I stated earlier, any member of the association, may propose an enactment that would serve to change the membership provisions and that has happened from time to time.

In 1972, a proposal to eliminate the male only requirement was debated by the Council on Legislation and was not adopted.

It came up again in 1977, proposed by, as I recall, four different proposing agents. It was debated by that world representative body and did not acquire sufficient number of votes to make that change.

The most recent episode, in which it was examined, was the 1980 Council on Legislation, when it was proposed by 11 Rotary Clubs and two districts from four different countries and, by the Board of Directors of Rotary International itself, the board sensing its members, that this was an issue of considerable concern to many clubs in the association, felt that this was an issue that should have thorough examination by council.

The debate took place at the 1980 council for a period of three hours and, as described in the report of that meeting, in the official magazine of this organization, August, 1980, it was reported that 39 representatives from 13 different countries commented on the pros and cons of the issue.

After this debate, there was a standing vote requested, which the chair, chairman, without a specific count, declared the motion was lost by the approximate percentage of 60 to 40. It requires a two-thirds majority of the delegates to the Council on Legislation to change the Constitution of Rotary International.

MR. KENNEDY: I would like the issue of The Rotarian of August, 1980, a copy here, to be marked Defendant's Exhibit next in order.

(Whereupon Defendant's Exhibit F was marked as requested.)

BY MR. KENNEDY:

Q I refer you to the article, starting on page 12 in the magazine, is that an official report of the Legislative Council transactions regarding the male only provision of the constitution?

A This is a report intended to adequately inform the members of Rotary Clubs worldwide. It is not the official report of the council. There is a formal report that lists all the council action and is sent to each club for its action following the action of the council, but, in terms of describing the debate on this issue, this represents an authoritative report of the issues debated.

MR. KENNEDY: Counsel, I will move, at this point, to introduce that portion of Exhibit F, comprising the August, 1980 Rotarian, and the description of the parliamentary proceedings that occurred respective to this issue.

Q Mr. Pigman, I am going to ask you for some evaluations of the impact on Rotary of certain things in a minute, but I would like to, before getting to that, to focus on one particular issue and, that is, is fellowship an important factor in Rotary's activities, particularly as a service organization?

A Yes. It is a very important factor. I would like to comment on that in two ways.

One is, to quote from the object of Rotary:

"The object of Rotary is to encourage and foster the ideal of service as a basis of worthy enterprise and, in particular, to encourage and foster:

"First. The development of acquaintance as an opportunity for service."

Fellowship and the camaraderie and ease of relationships that develop among a group of men that meet each week is an important component to their effectiveness, because they feel comfortable in discussing community issues and other community concerns with each other.

I think that there emerges, from this kind of relationship, many insights into the communities that might not otherwise be afforded to an individual. The fellowship has this impact on the community, as far as carrying out services.

On a broader scale, one must realize that a Rotarian can walk into any Rotary Club, in any country, and feel quite at ease participating in that meeting, knowing that represented in that group of men, whether it is in Tokyo or Bombay or Buenos Aires, a group of men who share, like he, a very similar group of concerns, whether it is vocational efforts or interests in the community or whatever.

So the fellowship is much broader than just the local fellowship. Rotary is a worldwide fellowship and, particularly as the world has developed in its communication, travel has increased dramatically, this is becoming an increasingly important dimension of the organization.

Q Mr. Pigman, the Unruh Act in California has very recently, in the case of Marina Point vs. Wolfson, reaffirmed earlier rulings, notably in a case in *Re: Cox*, that an organization which is found to be a business establishment must refrain from substantially all arbitrary discrimination among its patrons and customers. It is not just limited to omitting women. Exactly what the limits are, we needn't get into, but they go beyond, substantially beyond just being limited to taking in women. It is, to a first approximation, the law of the restaurants, which must serve anybody who walks in and is prepared to pay for a meal.

If it were found that Rotary International is a business establishment with respect to the applications of clubs for admission to the association, what would be the impact on Rotary International of such a ruling.

MR. SMITH: Objection. The witness is in no way qualified to make a conclusary statement based upon the evidence that we have before us. We are asking the witness to draw a conclusion as to what might happen in the future.

I think all he is really entitled to testify to are the facts that already exist or the facts of which he has past knowledge.

BY MR. KENNEDY:

Q The question will be interpreted as being based upon facts of which you have knowledge in your capacity as General Secretary of Rotary International and in connection with your period of exposure to Rotary International, of which you previously testified to.

A When I think, in my own mind, of what represents the services of Rotary, as they may be provided to the general public, in no way can I equate those with the services that might be provided by a retail establishment or place of public accommodation.

The principal difference being that nothing is expected in return in providing of the services and if the Rotary is construed to be in the business of providing services, charitable services, Rotary makes no discrimination or distinction between the object of its services.

Q I am speaking now of a finding which would hold that Rotary is a business establishment with respect to its member clubs, and I ask you—so that, essentially, it could impose a very limited choice on the qualifications of those

clubs to be admitted to the association called Rotary International.

I would ask you to address your answer to the impact on Rotary of that kind of loss of discretion in the selection of membership.

A Well, I don't understand that question. You will have to rephrase it in perhaps several parts.

Q All right. Let me give you an example. Suppose Rotary, as a result of this ruling, that Rotary International was a business establishment with respect to its members, as a result of that, Rotary International could not dictate the terms of the standard constitution to which all member clubs must subscribe; what would be the impact on Rotary International?

A Well, if Rotary International could not impose, as a condition of membership, on unit members, certain procedures, rules and regulations that it devises, then I think there would be a negative dilatorious effect on the association.

I think that service activities would diminish. I think that there could be a resulting loss of membership and the association might be less effective in reaching its objectives. I can illustrate that, if you wish.

Q Please do.

A If Rotary were not able to enforce certain rules that have been agreed upon worldwide, it would, I think, begin to disintegrate as an association.

Let us take the classification system previously cited, the principle of being able to ascertain community needs, to have a cross section of the community leadership.

If all the rules did not prescribe classification membership, then clubs would be free to ignore it and it could be quite possible that a few vocations could dominate and we would lose this component which, in my opinion, has served the organization very well.

If clubs were permitted to capriciously cancel meetings or to meet irregularly, it would have a poor effect on the matter of attendance, make-ups, interclub fellowship, the ability of any Rotarian to go to a meeting place at a particular time and day with assurance that the club would be meeting.

If attendance were not enforced, then the standards of any particular club could relax to the extent that membership in the club would become meaningless in terms of participation and involvement.

If Rotary International were not able to constrain clubs in certain policy areas, there could be misuses and abuses of that club's membership in the association. Clubs or individuals in clubs might try to promote a particular political or economic viewpoint. Clubs might badger other clubs to help them with their fund raising projects to the annoyance of clubs worldwide. Clubs might engage in activities which might be perfectly acceptable in their countries, but not looked upon with favor in other countries. Clubs could pass resolutions that take sides in hostilities among governments in political matters.

Rotary Clubs are presently constrained in their capacity to do that. If a club didn't meet its financial obligations to Rotary International, under the rules agreed upon, the results would be obvious.

If a club decided that it would become something less than a broad base service club, I think that would have a definite impact on the organization and probably not to the good.

Rotary Clubs enjoy a substantial autonomy in carrying out the stated objectives as a Rotary. They come into the association with a definite written commitment that they support the principles and objectives of the organization. When an individual member pays his dues, by the paying of his dues, he agrees to the principle and objectives of Rotary.

Now, that kind of commitment causes clubs to examine their purpose and their functions in light of those objectives and, because of this, activities result from the kind offered in Exhibit D and, furthermore, because many clubs learn about ideas through the clearing house of information, which this office represents, ideas transmitted through publication, there comes to exist a number of programs that are very beneficial to communities and world peace, which might never come to pass if clubs became narrow, single interest type clubs.

For example, because many clubs are interested in exchanging young people to countries overseas, Rotary International has been able to create one of the largest and most effective programs of youth exchange.

Because Rotarians voluntarily contribute to the Rotarian Foundation, the Rotarian Foundation to date sponsors a global program which provides educational awards for young men and women to study abroad and serve as ambassadors of good will.

Because Rotarians voluntarily subscribe to an effort to combat new traditional problems in countries, health problems in countries, we have programs supported through voluntary efforts in 20 different major problems on four different continents.

These are all evidence that an organization that tries, through the extent you can do this through voluntary association, to make a club continuously examine its purpose and

activities, results in activity of great benefit to communities locally and to their nations and to the inter-relationships among nations.

Without rules of this kind that are enforceable, it is my view, that a Rotary Club or its service club could be diminished in its importance, both in the eyes of its known members and its ability to work effectively.

In summary, Rotary requires that its clubs reach out and examine genuinely how they are going to serve and it does that through a system of service which is as comprehensive in interpretation of that word as you can imagine. It is the antithesis of any narrow or single service type, but appeals to its members, because it has something for all its members in terms of interest.

Q Now, that question was directed to the concept of loss of selectivity at the Rotary International level and the qualifications of the club members. I would like to transfer the attention now to individual membership in local Rotary Clubs and ask you, based upon your background with Rotary International, what would be the impact on the function of Rotary by a ruling that the individual club was a business establishment with respect to its individual members and thereby lost most of its privileges of selecting those members?

A Well, membership in Rotary Club is based on classification and it is based on invitation. If there were a ruling made that Rotary's classification system was not permissible, it would have a very negative effect on the organization. It would be in opposition to what the organization considers as a key component in carrying out its objectives.

The ability to gather weekly and have communication among community leaders, who have a broad knowledge of the community needs, who have no collective axe to grind,

who represent all races and religions, businesses, professions, if that element of Rotary were declared invalid, it would have a very serious effect on one of Rotary's most cherished and traditional and valued membership provisions.

Q Now, we have been focusing on the broader concept of general lawsuits, selectivity as it were, the imposition of the selectivity of the coffee shop upon membership, but I would now like to narrow your attention to the specific issue being challenged here, the male only provision, and ask you, based upon your background and experience in Rotary, what would be the impact on Rotary of a ruling prohibiting the organization from enforcing its male only constitutional provisions?

A Well, the male only principle of membership is a provision that is valued in my observation by a very substantial majority of the members of Rotary Clubs worldwide.

I make that observation based on my own observations, the travel in all parts of the world, on information reaching me through correspondence and minutes and publications of the Rotary Clubs, et cetera, but probably most definitively, by the character of the debate and the vote itself on the Council of Legislation, the issue has come before the association on three different occasions in the last decade and it has failed to acquire the necessary votes.

The organization is more than 75 years old. It has a set of rules and traditions and procedures which have been developed through democratic process, which have been the product of the best thinking of the representatives in these clubs worldwide over this entire period.

It is a conservative organization for this purpose, because Rotary International, as an association, tries to cooperate with rules and procedures that are acceptable to the total worldwide association and however desirable or otherwise a

particular rule or provision might be in a particular region or in a particular state or area, the decision by the worldwide legislative body and its convention have always been what is in the best interest of the association to help carry out its ultimate objective of service.

There is a historical basis for the male only provision. It was founded in 1905 on the basis that this would be an organization of service comprising business and professional leaders. In the society of America, in that era, there were very, very few women in positions of business and professional leadership at that time.

Furthermore, in American society, my own reading of history, there were relatively few organizations that brought together men and women for any purpose, but especially purposes that had such a strong component fellowship.

Now, the male only provision was a material part of those first constitutions. There is no record, in my knowledge, that those early founders of Rotary ever considered the matter of having women in Rotary, so it continued that way for many years and society here began to evolve, but that became one of the provisions, one of the rules, which, like many others, become part of the tradition and practice and, as they get years on them, they are not easy or subject to change, unless those changes meet with the approval of all the members of the association.

Then, as Rotary grew to countries with other cultures different from those of the Western hemisphere, it grew into cultures where the role of women was vastly different from the emerging role of women from societies where Rotary was born.

So, masses of changes in this became more complex, not less complex and why is this? Because Rotarians have tried to agree on a set of rules acceptable to all the components of

its organization. It is one of the few organizations, to my knowledge, that have been able to operate in such a way on a worldwide basis.

They have always sought those aspects which they could have universal agreement on. They have agreed to avoid those aspects on which there would be serious division, serious enough that it would be a detrimental aspect in enabling the organization or its unit clubs to carry out its objectives.

This general operating policy of Rotary International is one of the key reasons for its success and growth. It has enabled the association to keep open doors of communication, many, many, many areas of intercountry communication, where those doors have been closed to other associations that have been less broad in their motivations and objectives.

They view themselves as a family worldwide and they do those things that help the whole family progress. They try to avoid the areas where serious disharmony would be harmful to the organization and they feel this is very important if they are going to have any effect as a non-political, non-governmental force in meeting peace among nations.

In the Council on Legislation debate, which is described in the August, 1980 issue of *The Rotarian* magazine, there are enumerated there the principal reasons as stated by Rotarians for and against the issue of women in Rotary.

One of the expressions of concern against inclusion of women at this time concerns that aspect of fellowship within the individual club or the camaraderie that is enjoyed by the present male membership of the club. It is my opinion that this is an area which members of Rotary and, I dare say, which members of any organization, would find difficult to verbalize. It is an area—

Q Difficult in the sense of reluctant?

A To speak about, reluctant to speak about, because it is an area that they feel deeply about and they realize that there is a—in a companionship of fellow club members, there is a certain ease of communication which enables them to carry out service and this particular chemistry exists and they probably don't know quite what would happen if the chemical formula were changed in any way and what would happen to this acquaintanceship and fellowship, would it be changed in a way that they can't discern? They don't know and thus they are reluctant to talk about it.

So I can only say, in this area, which is subject to a lot of conjecture, of course, that they feel that Rotary's effectiveness and service objectives might be somehow jeopardized if the change were to come before they feel they are ready for it.

Now, Rotary has always been operated on rules that it has agreed upon internally. To my knowledge, its rules and regulations are not illegal in any jurisdiction, in any country, in which a Rotary serves. It is difficult for me to conjecture or discern what might happen to Rotary International if its ability to agree upon its own rules of procedures were to be dictated by decisions, forces external to its own operations. It has not faced that. It has been able to operate worldwide and I think it is one of the very few organizations that has been able to do this and, to its credit, it has and it has continued to agree worldwide.

Q Let me just pick up a few stray pieces of business that were not covered earlier. When we were speaking of Rotary International, we spoke about tax exemptions for charitable purposes given to the Rotary Foundation. To your knowledge, has the State of California granted charity status to the Rotary International Corporation?

A No, not to my knowledge. It has not granted charity status to Rotary International.

MR. KENNEDY: Mr. Smith, we discussed earlier that it would be unnecessary for Mr. Pigman to go through the various specifics of how Rotary Club of Duarte was notified of its impending expulsion unless it removed its women members and we have not gone into that on a mutual understanding, which I would now like to make a formal stipulation that none of the plaintiffs claim that there was any violation of the rules and procedures of Rotary International for the processing of that dispute, is that correct?

MR. SMITH: That's correct. We so stipulate.

MR. KENNEDY: On that basis, I will not ask Mr. Pigman to go into the details of what was done and that is also understood, correct?

MR. SMITH: That's correct.

MR. KENNEDY: If I may just have a minute.

All right. Your witness, counsel. You want to take a brief break?

MR. SMITH: Why don't you take five minutes to allow you to catch your breath.

(Whereupon a recess was taken)

CROSS EXAMINATION

BY MR. SMITH:

Q I would like to remind you that you are still under oath. We will have the same rules in regard to the objections also. Any objections that need to be taken, need to be taken down.

I would like to follow, to the best of my ability, roughly, the sequence that Mr. Kennedy was following, although, I am not as well organized in cross examination as he was on direct, but we will try and make it coherent for you.

In terms of membership policy, could you describe the various classes of membership that exists for Rotary International?

A Yes. Well, there are four kinds of membership in a Rotary Club. They are called active, senior active, past service and honorary.

Q What are the qualifications for each class of membership?

A Qualifications are described in the constitutional documents for membership in a Rotary Club. These are described in Article Four of the Constitution of Rotary International and they describe the essential qualifications of membership for all those first three classes of membership, honorary membership has a different set of qualifications.

Q Do all of the four classes of membership require that one be a male?

A Yes.

Q Do any of the classes of membership allow people to become members, who are not active or have been active in a business or profession?

A Would you state your question again, please?

Q Do any of the classes of membership allow a person to become a member who has not been active, now or in the past, in a business or profession?

A I am sorry. You will have to state it again. The way it is stated, I want to be sure of my answer to that.

Q Let's go through it then in each case.

A Okay.

Q Now, in order to become an active member, must one be presently employed in a business or profession?

A Yes.

Q In order to become a senior active member, must a man, either be presently employed in a business or profession or have been employed in the past in a business or profession?

A Yes.

Q Is the same thing true for past service?

A Yes.

Q And is the same thing true for honorary member?

A No.

Q Are these all spelled out in Article Four of the constitution?

A Article Four describes active membership and the bylaws of Rotary International provide for kinds of membership in addition to active membership, those being senior active, past service and honorary and qualifications are described in the bylaws and those are described in Article Three of the bylaws.

Q I understand from your testimony on direct that the Extension Manual No. 8101 sets forth the rules and the forms, essentially, that must be completed in order to become a Rotary Club. How does Rotary International monitor Rotary Clubs, once they have come into existence, to ensure that they are indeed following the rules of Rotary International?

A Rotary International does this by several means, with one or two exceptions representing isolated geographical clubs. All clubs are members or are identified as being part of a district and the rules provide that each club be visited annually by its District Governor.

A District Governor receives the summary of club plans and objectives from the club and meets with the club President and Secretary as part of his official visit.

The second part of the official visit concerns a meeting with all the club committee chairmen and the third part represents an address to the club.

In the first two parts of this meeting, his opportunity to ascertain the extent to which clubs are meeting their obligations, Rotary International informs the Governor if the club has met its financial obligations.

Each club must report to its Governor its attendance for the week and the Governor must include this in his monthly letter, which is his official monthly publication.

Each new member, which is brought into a Rotary Club, is reported to the District Governor and to the office of the General Secretary.

Those are the basic means, plus review of the club's progress by a member of my staff of the same reports that the Governor gets.

These are the basic means by which we monitor a club's compliance with its constitutional documents.

Q To the best of your knowledge, have any clubs, that have not yet been formed, been disallowed from being chartered for any reason that might be included in Manual 8108?

A Yes. At any given time, there would be underdevelopment worldwide the groups of men who become the nucleus of Rotary Clubs. When a sufficient number are gathered together and begin to meet weekly, they achieve a status of professional Rotary Club. This process of developing a new club normally takes anywhere from two to five months. This amount of time is required for the club to meet its conditions.

A typical reason for delay in admission is the club failing to produce, with the aid of the Governor's special representative, a satisfactory list of charter members who must satisfy the conditions of separate and district classifications and kind of memberships, all of which are described.

If a club does not meet these provisions, they are not admitted to the association.

Then, following its admission, the monitoring that I have described takes place and the club that assisted the Governor and serves as the new club's sponsor club currently is required to provide to me, not less often than quarterly, a report on its own efforts to help monitor the club.

Q To the best of your knowledge, how many clubs have been disallowed within your tenure as General Secretary?

A That is a very difficult question to answer, because most clubs that would be in danger of being disallowed usually eventually comply. It would tend to extend the formative period. The procedures of this extension in Rotary are regularized to the extent that each step must be satisfactorily completed before the next one is taken and there are undoubtedly countless instances in which District Governors or their special representatives have formally surveyed a community and found that the conditions did not exist for Rotary there. Therefore, they would go no further and no report would come to me.

On the other hand, those clubs that have been admitted and have been in operation occasionally are terminated for failure to function.

Q When such a termination—where would it originate?

A A termination of an existing club originates usually in one of two ways. It is a decision by the club itself to resign, because its members themselves feel that they are unable to function under the original conditions of their admittance or there would be an evaluation and recommendation of the officers of Rotary International, the District Governor, usually in concert with the group itself.

The reason for termination of failure to function, inability to meet the financial obligations, inability to sustain a membership with qualified persons in the community and it is often the product of a community itself that has withered away for economic reasons.

Q Therefore, have any clubs been terminated as a result of action initiated, either by you or by the Board of Directors?

MR. KENNEDY: You mean, ever in the history of Rotary or during any particular time period?

BY MR. SMITH:

Q During any time period of which you have knowledge, aside from the obvious case or the instant case.

A I would say, yes to that, although, I am not in a position, without research, to describe the specific instances.

In a typical year, 20 to 30 clubs would be terminated. The most recent example, of which I have personal knowledge, would have been a board decision to terminate Rotary Clubs in a country for failure to function, because they weren't able to function, because of the conditions of that country.

Q Along with the study on the classifications that are available, once a club wishes to be formed, is there any minimum population base criteria that are used to determine whether or not a club can continue to function in a community?

A The club may only be admitted if it has a minimum of 20 members. Once it is admitted, there is no lower limit stated in our documents, nor is there any upper limit.

In practice, the board has developed a policy, which represents a kind of early warning system or level and they have set that level at 20 and the policy says that, in any month in which the membership of a club drops below 20, that the District Governor is asked to contact the club and see if it has any particular problems and seek to help it.

The clubs in Rotary average 50, range from fewer to 20, as I said, to 900 in one instance.

Q If the club consistently remains below the level of 20 members, are there any further steps taken than simply the reports by the District Governor?

A Yes. There are further steps taken, but no steps that would be construed by the club as putting its membership in jeopardy. Every attempt is to help the club to the extent that the qualified people are available in the community to do several things, to resurvey the community and to determine the actual membership potential, to examine its service program and make sure it is appealing to potential members, to look at its public relations, to see if the understanding of potential members is adequate, to see if there is any other negative influence that would cause the club not to succeed.

Size has never been the determining factor for the effectiveness of the Rotary Club by policy or otherwise, because conditions that create low membership can always be re-

versed or frequently can be reversed. The Board of Directors, nor the convention, has never held a policy that would tend to dismiss a club merely because it happens to be at low ebb. There is ample evidence that these clubs can come back in membership and activities and there is ample evidence that even a small club could be very effective in the purpose of Rotary.

Q And, in regard to interclub participation, you are asked about what obligations a host Rotary Club has to visiting Rotarians. To the best of your knowledge, are there any instances where countries or individual clubs, due to the particular circumstances of where they are located, have refused to permit visiting Rotarians to have meals with them or gain membership or gain attendance credit with that particular club? For example, until recently, have black Rotarians been allowed to make up at the Rotary Club at Birmingham? Are black Rotarians allowed to make up at Rotary Clubs at South Africa?

MR. KENNEDY: I object to this as being irrelevant, but you may answer.

THE WITNESS: I know of no, to the best of my knowledge, no incidents in which a Rotarian of any club has been refused participation in a Rotary Club anywhere in the world.

Now, I will amplify that by saying that sometimes Rotarians, like citizens of any country, are constrained to travel to certain countries by their own governments and certain policies, but that is an aspect completely outside of Rotary and beyond their control. Once they are out of the country, I have never heard of any episode that has happened or in any way have they been made to feel unwelcome.

BY MR. SMITH:

Q In regard to a policy that is set forth on commercializing Rotary beyond the statement in the Manual of Procedure itself, does Rotary International or, to the best of your knowledge, do District Governors do anything to bring home this policy to the individual Rotary Clubs?

A Yes, they do. I think I would cite as evidence of that the official directory of the organization. The purpose of this directory of all the club worldwide is to enable it to contact other clubs in the work of their fellowship.

MR. KENNEDY: Are you reading that from something?

THE WITNESS: Yes. I am quoting from the inside cover, this text titled, "Important," and here is a caution, "Authorized use of the directory":

"Rotarians shall not use the official directory as a commercial mailing list or make it possible for anyone else to use it for that purpose."

Rotary International, which has a list of all of its members, does not make that list available to any commercial concern. District Governors who publish directories perhaps of the leadership in their own district, frequently have, within that directory, cautions and policies stated similarly and it is quite common for a Rotary Club, which might publish a roster of its members, to have a similar warning against its use for any commercial purposes.

In addition to that, many Rotary Clubs have, in their own bylaws or policies, specific provisions that constrain any member from using the listed members to his commercial advantage.

BY MR. SMITH:

Q Does the official directory have amended to it a listing of hotel facilities?

A Yes, it does.

Q And do some of the hotel facilities indicate whether or not the owners or proprietors are themselves Rotarians?

A The basis of a hotel listing in the official directory is that the hotels listed are owned or operated by Rotarians or are hotels that are the meeting places of Rotary Clubs.

Q Do some of the listings indicate specifically that the owner or the operator is a Rotarian?

A Yes, they do.

Q Has the question of whether or not that constitutes commercializing ever been addressed by the board or by your office, to your knowledge?

A The question undoubtedly was addressed by the board and/or was considered to be not a violation of Rotary's policy against commercialization, because they include this list of hotels and, particularly, those that are the meeting places as a convenience to Rotarians who travel and to encourage them to have knowledge of where Rotary meets and where they can make contact with Rotarians while they are abroad for purposes of interclub fellowship.

Q Thank you. Going back to the question of the enforcement of Rotary's own policy and existing clubs, to the best of your knowledge, has any club ever been expelled for failure to maintain diversification of classifications?

A To the best of my knowledge, that has never been the exact stated reason for a termination. One could infer that that was a condition of any club that dropped to a membership level, whereas diversification represented only that

diversification in the number of members, whether it is four or five or six, but that would have been a subordinate reason to the basic reason.

Q Have you ever been informed of any clubs that are meeting on an irregular basis, either throughout the year or at certain seasons of the year?

A In any instance where a club is brought to our attention that it is not meeting regularly, we take action to inform the club of its obligations and notify the District Governor.

Whenever a club asks for interpretation of the rules on whether or not the cancellation of the particular meeting is a valid one, we, to the best of our ability, advise them on what is the appropriate action.

There are a few occasions which, for particular cultural conditions, clubs may not meet regularly in a particular month and I refer to the Islamic community's month of Ramadan.

Q If a club were meeting twice a month year round, would that club logically be subject to expulsion?

A Yes. It would, unless it was not operating under the standard club constitution.

Q Speaking of that question, when did the standard club constitution come into existence?

A In June, 1922.

Q And about how many clubs are operating under constitutions that predate that?

A At the present time, about 75.

Q Are the clubs in Great Britain and Ireland, in general, operating under standard constitutions?

A The clubs in Great Britain and Ireland operate either on a standard club constitution, which is prescribed by the territorial unit, or there may be one or two instances in which clubs admitted or formed prior to 1922 still retain their original constitution and may deviate in some aspects from the standard.

Q Aside from the Birmingham Club, are there any clubs, that are pre-1922 clubs, that have any restriction on membership that does not exist in the standard club constitution?

A Not to my knowledge.

Q To the best of your knowledge, are there any clubs that have an age restriction on the constitution above that age restriction which exists in the standard constitution?

A There is no age restriction in the standard club constitution.

Q Are there any clubs, that you know of, that have an age restriction of, say, 40 years minimum in their own constitutions?

A Forty, that is a person must be 40 years of age or more?

Q The minimum age of 40 years.

A I know of no club that has such a restriction.

Q Have any disciplinary steps been taken against clubs for advocating particular political viewpoints with other Rotary Clubs or with Rotary members?

A Yes.

Q Would this apply, by any chance, to clubs in Taiwan?

A The disciplinary procedures of Rotary involves several steps. This office or any office, International is made aware

of activity of a club that is in violation of a standard club constitution, such as propagandizing on an issue, the club is asked to, reminded of its obligation under the constitution and it is told to cease and desist.

Q Was your office or the board made aware of a letter circulated by members purporting to be representing the various Rotary Clubs of Taiwan, requesting American Rotarians to get in touch with their local political representatives to seek to block U.S. recognition of China Mainland?

A Yes.

Q Was any action taken by the Board of Directors that could be called disciplinary in regard to that letter?

A I cannot personally vouch that it was done, but I would have no doubt that the procedure that I described was invoked in that instance, either by means of direct letter from this office or the President or through the District Governor.

I would have to check the records.

Q To the best of your knowledge, prior to 1922, was there any other restriction on membership, aside from the male only restriction, in the constitution of the various Rotary Clubs? —

A I don't know if prior to 1922, whether the association agreed that it would adopt a uniform code. There were a variety of constitutions that had emerged. I believe there must have been about a thousand clubs in the association at that time and there were a variety of membership provisions and so forth. I am just not a sufficient student of history to know what restrictions may have been at that time.

Q In the 1922 constitution, was there any restriction in regard to race or religion or any other characteristic aside from sex?

A No. Not in the standard club constitution, no. There was no restriction.

Q To the best of your knowledge, in the original constitution for the Chicago Club, was there a sexual qualification provision?

A Would you say that again, please?

Q In the original constitution for the Chicago Club, was there any restriction explicitly on membership being available to males only?

A I don't know.

Q Do you know if there were any clubs, prior to 1922, that did not have restrictions on the basis of sex in their constitutions?

A Not to my knowledge, no.

Q Is there a provision in Rotary's articles or bylaws stating that, in the event that a particular provision of the articles and bylaws is contrary to a local law, that that provision be waived?

MR. KENNEDY: Off the record.

(Discussion off the record.)

MR. KENNEDY: Back on the record.

THE WITNESS: The bylaws of Rotary International, under Article One, Section 2D, appearing on page 248 of the 1981 Manual provide that, and I quote:

"Under exceptional circumstances or where necessary to comply with the laws and customs of any nation, state or province, the board may, at any meeting of the board, by a two-thirds majority of the members present, approve provisions in a club constitution which are not in accordance with the standard club constitu-

tion and amendments thereto, so long as such provisions do not contravene the provisions of the constitution and these bylaws."

There are only two instances, to my knowledge, where that has been applied, there may be others. One involved a constitution of a Rotary Club in Thailand, where the law of the nation required that the constitution of every free association had to state that it was not organized for political purposes.

MR. KENNEDY: May I voir dire on just that point?

REDIRECT EXAMINATION

BY MR. KENNEDY:

Q Do I correctly understand that provision to mean that, if a legal law required the admission of females, that the board would not be authorized, under that provision, to waive the modification?

A That is a correct understanding, because it is very clear that they may only approve a provision which does not contravene the constitution bylaws.

MR. DAVIS: It doesn't refer to local law, it refers to state or province or nation, not to community or country or anything else.

CROSS EXAMINATION (Resumed)

BY MR. SMITH:

Q Then, I would understand that to mean that, in South Africa, none of the constitutions there could have a racial ban, none of the club constitutions could have a racial ban?

A The law of the association is that if any Rotary Club has within it a restriction based on race, that it is null and void, without effect.

Q Let me ask you a couple of questions. In your role as a member of the Evanston Rotary Club, do you pay for your own meals at the Evanston Rotary Club?

A Yes.

Q And do you take a deduction on your taxes for the meals as a business expense?

A No.

Q Do you take a deduction on your taxes on payment of dues as a business expense?

A Yes.

Q Do you know what the majority practice is of the members of the Evanston Club, in terms of their treatment of dues and meals, expenses on their tax forms, just by your conversations with them or by rumor?

A No, I don't. I have never discussed that with any member of the club.

MR. KENNEDY: Mr. Pigman, is it a condition of your employment, as General Secretary, that you be a member of a Rotary Club?

THE WITNESS: Yes. The General Secretary must be a member of a Rotary Club.

BY MR. SMITH:

Q To the best of your knowledge, has any other Rotary Club been expelled from the Rotary Club by the Board of Directors, besides the Duarte Rotary Club?

A Yes.

Q What were the grounds for the expulsion?

A Well, in the past year, I would guess the record would show that approximately 25 Rotary Clubs have been terminated in Rotary International for a variety of reasons. The principal reason would be failure to function with all that implies. There may have been one or more which failed to meet its financial obligations, a club that does not meet its financial obligations is subject to termination at a specified date.

Q Of the 25 clubs that terminated, how many of them were terminated as a result of action by the Board of Directors to which the club itself was opposed?

A I am unable to answer that on the basis of my memory.

Q Would you give a rough approximation?

MR. KENNEDY: I object unless it is something more than speculation. He can answer.

THE WITNESS: Well, the vast majority of them would be termination upon recommendation of the District Governor, without objection by the remnants of the club.

BY MR. SMITH:

Q In reference to the memo of—the official memo on the Rosemead Club, could you give approximate numbers as to the number of members in the clubs that had been cited in Exhibit D and also the Rosemead Club?

A Well, Exhibit D includes, I think, eight clubs and do you wish to know the membership of the Rosemead Club in this particular year as opposed to the membership of other clubs?

Q Yes.

A All right. The Arcadia Club, let's see, reports as of the 30th of June previous 123 members; the Covina Club, 100 members; the El Monte Club, 64; the Monrovia Club, 68 members. The Rotary Club of Montebello reports 32 members; South Pasadena, 68. Duarte reported 17 in 1972. Rosemead reported, as of 30, June, 1977, 15 members.

Q Would your expectations as to the degree of club activities be related, at least in part, to the number of members the club has?

A In my judgment, I have not necessarily found a correlation between the number of service activities undertaken by the club and the size of its membership. If anything, there is a tendency for the larger club to have a more diversified program and perhaps the individual projects are larger in scope, that's my observations.

Q Does the report on the Rosemead Club appear more to resemble that of Duarte or of the other seven clubs?

MR. KENNEDY: Resemble in what particulars?

MR. SMITH: In terms of the scope of activities and also in terms of the general recommendation by the District Governor.

THE WITNESS: Well, in membership, Rosemead would share the same membership categories as Duarte, being less than 20 at the time of this report. Both clubs expressed ambitious hopes of membership gain during the year. In the case of Rosemead, they expected to have a net membership gain to the 21 level, net growth, and in the case of Duarte, they had hoped to grow to 30. These are expectations, not accomplishments.

In terms of activities, both clubs list projects or areas, which they are going to examine, which seem to

be generally in concert with the amount of activity of clubs of this size.

MR. SMITH: Thank You. I have no further questions.

MR. KENNEDY: All right. Counsel, may we stipulate that the reporter will type this up and submit it directly to Mr. Pigman, who will make such corrections as he believes are appropriate, subject to the advice of Mr. Davis or his office. He will execute it before a notary and return the original to me and I will make appropriate arrangements to file it with the Court, if agreeable, perhaps not before trial, but at the time of trial. Is that all right?

MR. SMITH: So stipulated.

AND FURTHER DEPONENT SAITH NOT.

APPENDIX H

The applicable Constitutional provisions are:

Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble . . . [I Amend.]

. . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
[XIV Amend., § 1]